

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****141****CR-3320-2024 (O&M)****Date of Decision : 18.11.2024**

Vijaya Mittal and Others

....Petitioners

VERSUS

Anil Khetan and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.K. Singla, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 16.05.2024 whereby the application filed by the petitioners for examining the witness i.e. concerned officer of the office of Deputy Excise and Taxation Commissioner (ST), Yamuna Nagar alongwith record of M/s Radhey Krishan Stone Crusher, Village Doiwala, has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioners herein filed a suit for declaration to the effect that the plaintiff-petitioners herein are joint owners in possession in respect of the land measuring 14 Kanals 14 Marlas including the Stone Crusher by the name of Radhey Krishan Stone Crusher, Village Doiwala. Written statement was filed. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether plaintiff is entitled to decree for declaration on the grounds mentioned in the plaint, with

consequential relief of permanent injunction as prayed for ? OPP

2. Whether the suit is not maintainable in the present form ? OPD

3. Whether plaintiffs has no locus standi and no cause of action to file present suit ? OPD

4. Whether plaintiff is estopped from filing the present suit by their own act and conduct ? OPD

5. Whether this Court has no jurisdiction to hear, try and entertain the present suit ? OPD

6. Whether suit of the plaintiff is under valued for the purpose of Court Fees and therefore, the same is liable to be dismissed.

7. Whether the suit of the plaintiff is barred by law of limitation ? OPD

8. Whether the suit of plaintiffs is liable to be dismissed under Order 7 Rule 11 of CPC ? OPD

9. Whether plaintiffs have not come to this Court with clean hands and have concealed the true and material facts from this Court and not entitled to relief as claimed for ? OPD

10. Relief.

3. After the defendant-respondents had concluded their evidence, the present application was filed by the plaintiff-petitioners for permission to

examine a witness at the stage of rebuttal. The said application was dismissed vide the impugned order dated 16.05.2024.

4. Learned counsel for the plaintiff-petitioners would contend that the evidence now sought to be led is in response to the evidence led by the defendant-respondents and hence the Trial Court erred in dismissing the application for leading rebuttal evidence.

5. Heard.

6. In the present case issue No.1 was framed, which reads as under:

“ 1. Whether plaintiff is entitled to decree for declaration on the grounds mentioned in the plaint, with consequential relief of permanent injunction as prayed for ? OPP”

7. On a query put to the learned counsel for the plaintiff-petitioners by the Court as to on which issue the rebuttal evidence is sought to be led, learned counsel for the plaintiff-petitioners has candidly admitted that the evidence now sought to be led pertains to issue No.1. Onus of issue No.1 was cast upon the plaintiff-petitioners and hence it was incumbent upon the plaintiff-petitioners to have led their evidence in the affirmative. A party cannot be permitted to lead evidence in rebuttal the onus of which was cast upon the said party. Hon’ble Division Bench in the case of **Surjit Singh & Ors. vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** has held as under:

“ 15. In our opinion, Order 18 Rule 3 of the Civil Procedure Code would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of

proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 of the Civil Procedure Code. The rule clearly postulates that "the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties". No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (supra). It has been held that if a statement is made by the Advocate for the plaintiff that "the plaintiff closes its evidence in the affirmative only," the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned Single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs

contrary to the observations of the Division Bench in Jaswant Kaur's case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned Single Judge in the case of M/s Punjab Steel Corporation (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned Single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra)."

8. In view of the fact that the evidence sought to be led in rebuttal is qua issue No.1 the onus of which was on the plaintiff-petitioners, no fault can be found with the impugned order passed by the Trial Court.

9. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

18.11.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO