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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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Date of decision: 25.03.2025

Sukhdeep Singh

... Petitioner

Vs.

Harbant Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sarju Puri Advocate
for the petitioner.

Mr. H.S. Dhandi, Advocate
for respondent No.1.

None for respondents No.2 to 4 and 6 to 8.

Service of respondent No.5 has been dispensed with by
this Court, vide order dated 25.08.2022.

SUVIR SEHGAL J.

1. Assailing order dated 02.05.2016, Annexure P-9, passed by Civil Judge, Junior Division, SBS Nagar, whereby application filed for leading additional evidence by examining a handwriting expert has been declined, petitioner/plaintiff No.1 has approached this Court, by way of present revision petition.



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2. Counsel for the petitioner has urged that dispute pertains to a Will dated 25.03.2010, which was executed by Bachan Kaur @ Gurbachan Kaur, who had thumb marked it. He submits that in order to prove the due execution of the Will, comparison of thumb impression of the testator with her standard thumb impression on the registered Power of Attorney dated 11.06.2001 is essential. It is his case that the petitioner could not lay his hands on the original Power of Attorney, which is an admitted document and after locating it, application Annexure P-7 has been filed, but the trial Court has erred in rejecting the application, while holding that an expert cannot be examined in rebuttal, nor can additional evidence be produced by the plaintiff. He has contended that the Court has wide powers under Section 151 CPC to permit production of additional evidence at any stage of the suit, provided it is necessary for the just decision of the case. He asserts that deletion of Order 18 Rule 17-A CPC does not mean that additional evidence cannot be received at all. He has placed reliance upon:-

- i) ***K.K.Velusamy Versus N. Palanisamy; 2011(2) SCC 275;***
- (ii) ***Government Senior Secondary School Versus Lilu Ram and others, 2012(3) PLR 403;*** and
- (iii) ***Baljit Singh Versus Manjit Singh, 2014(1) PLR 625.***



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3. While supporting the impugned order, counsel for respondent No.1/defendant No.1, has urged that after the closure of evidence in affirmative, plaintiff cannot be permitted to produce evidence in rebuttal, regarding issues, the onus of which is on the plaintiff. It is his categorical assertion that plaintiff can be permitted to lead evidence in rebuttal only on the issues, in which the burden of proof is on the defendant unless the plaintiff specifically reserves his right to do so. Reliance has been placed by him upon:

- (i) **Surjit Singh and others Versus Jagtar Singh and others, 2007(1) PLR 552;**
- (ii) **Gurcharan Singh and others Versus Sukhmander Singh and others, 2018 (4) Civil Court Cases 49;**
- (iii) **Parmod Kumar Versus Bhagat Singh, 2018(4) PLR 741;**
- (iv) **Ragbir and others Versus Parkash and others, 2016 (4) Law Herald 3527;**
- (v) **Shri Sangmeshwar Mahadev Gramo Udyog Mandal Versus Ajmer Singh and another, 2014(49) RCR (Civil) 512;** and
- (vi) **Ram Kumar Versus Raj Kumar and others, 2014(2) PLR 536.**

4. I have heard learned counsel for the parties and considered their respective submissions besides examining the documents appended with the paper book.



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5. Suit, Annexure P-1, has filed for the declaration to the effect that plaintiff No.1, who is a minor and under the care and protection of his mother, plaintiff No.2 is the owner in possession of the land to the extent of share of Bachan Kaur @ Gurbachan Kaur on the basis of a Will dated 25.03.2010. A further declaration has been sought to the effect that mutation No. 2419 of the estate of Bachan Kaur, deceased is nonest and inoperative qua him with consequential relief of permanent injunction restraining contesting defendants from interfering in his possession or from alienating the suit land. Upon notice, suit is being contested and a written statement, Annexure P-5, has been filed by the defendants. On the basis of the pleadings of the parties, Trial Court framed issues on 03.04.2012. The core question to be determined by the Trial Court is whether Will dated 25.03.2010, executed by Bachan Kaur, deceased, is a legal and valid document and that as to whether the plaintiff is entitled to the declaration, as prayed for. Plaintiff examined five witnesses and closed his evidence. The order passed by the trial Court on 18.05.2015 is reproduced hereunder:-

“Sukhdeep Singh V Harbans Kaur

Present: Sh. VS Pahwa Adv counsel for plaintiff

Sh. Daljit Singh Adv counsel for defendant No.1

Defendant No.2 ex parte

Suit against deft. No.3 to 5 already DAW

Sh. Vikas Narad Adv counsel for defendant No.6

Sh. SK Diwan Adv counsel for defendant No.7



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PW5 cross examined thereafter plaintiff closed his evidence in affirmative. To come up on 3.7.2015 for entire evidence of defendant. PF/DM list of witnesses be filed within 7 days.

*(Aman Sharma)
CJ(JD)/18.5.2015”*

6. Defendants closed their ocular evidence on 21.10.2015 and tendered some documents while closing their evidence on 16.11.2015. Proceedings were deferred for leading rebuttal evidence, when application Annexure P-7, has been filed by plaintiff No.1 for adducing additional evidence and after contest, it has been dismissed, vide order impugned herein.

7. Interpreting Order 18 Rule 3, CPC, a Division Bench of this Court in **Surjit Singh’s case (supra)**, has observed as under:-

“21. 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 **Mrs. 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 Mrs. Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra). The reference is answered accordingly. Let the Civil Revision be placed before the Single Judge for decision of the same on merits.”

8. Another Division Bench of this Court in Jagdev Singh and others Versus Darshan Singh and others, 2007 (1) R.C.R. (Civil) 794 has held that plaintiff cannot as a matter of right lead evidence in rebuttal on issues, the onus of which is upon him. Yet another Division Bench in Avtar Singh and another Versus Baldev Singh and others, 2015 (1) PLR 230 has held that the plaintiff has the option to lead his entire evidence on all the issues, and in case, he intends to lead rebuttal evidence or answer the evidence that is to be led by the defendant, as regards the issues the onus of which is upon the defendant, he shall have to reserve his right. It has been clarified that the plaintiff shall have to exercise his option either when he closes his evidence in affirmative or in any case before the other party begins its



evidence. If he fails to reserve such right, in terms of the provision of Order 18 Rule 3, CPC, his right to lead evidence in rebuttal would stand forfeited. The legal position has been authoritatively settled by three different Division Benches.

9. Adverting to the facts of the present case, it is evident that the plaintiff's closed their evidence in affirmative on 18.05.2015. They did not reserve any right to lead evidence in rebuttal nor such a right has been exercised by them at any time before the defendants led their evidence. The plaintiffs therefore, do not have any right to lead evidence in rebuttal and the trial Court has not committed any error while declining the application vide order Annexure P-9.

10. In **K.K.Velusamy's** case (supra), Supreme Court observed that inherent power under Section 151 CPC can be exercised to deal with a situation not provided for in CPC, to meet the ends of justice and to prevent the abuse of the process of Court. While dealing with application under Section 151 CPC, seeking production of additional evidence and recalling of witnesses after the parties have concluded their evidence, Court should ensure that it is not dilatory tactic and that non-production of additional evidence earlier was for valid reasons. Perusal of application, Annexure P-7, shows that only explanation given by the plaintiffs was that they could not lay their hands on the original power of Attorney. The explanation is



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unsatisfactory as the power of Attorney is admittedly a registered document. The application lacks bona fide has been rightly rejected by the Trial Court. The judgments by co-ordinate benches cannot come to the aid of the plaintiffs. There is no irregularity or illegality in the order passed by the Trial Court. Petition being devoid of merits, is dismissed with no order as to costs.

11. Civil suit was instituted in the year 2010 and has remained pending for one and a half decade. Proceedings are at an advanced stage, therefore, the trial Court shall make an endeavour to conclude them as expeditiously as possible preferably within a period of two months from the date of receiving a copy of this order.

25.03.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No