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

(106)

CR-842-2020

Date of decision:- 03.03.2025

Sher Singh and another

...Petitioners

Versus

Gurdeep Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Preetwinder Singh Dhaliwal, Advocate
for the petitioners.

None for respondent No.1, despite service.

Service of respondent No.2, has been dispensed with,
by this Court vide order dated 10.02.2025.

...

SUVIR SEHGAL, J. (Oral)

1. Petitioners-defendants No.1 and 2 have approached this Court by way of instant revision petition assailing order dated 09.01.2020, Annexure P-7, whereby an application filed by them for striking out of the list of witnesses sought to be examined by respondent No.1-plaintiff in rebuttal evidence, has been dismissed.

2. Counsel for the petitioners-defendants No.1 and 2 has argued that after closing his evidence in the affirmative, respondent No.1-plaintiff cannot be permitted to produce evidence in rebuttal regarding issues the onus of which



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is upon him. He asserts that plaintiff can be permitted to lead evidence in rebuttal only on the issues, in which, the burden of proof is on the defendants, unless the plaintiff specifically reserves his right to do so.

3. There is no representation on behalf of respondent No.1-plaintiff, despite service.

4. I have heard counsel for the petitioners and considered his submissions besides examining the paper book with his able assistance.

5. Plaintiff filed a suit for declaration to the effect that he is the owner in possession of the estate left behind by Karnail Singh and in the alternative, he sought joint possession of the suit property. His pleaded case is that Karnail Singh, who died on 09.12.2016, was the owner of the ancestral suit property. During his lifetime, he executed a WILL dated 17.11.2016, in favour of the plaintiff, who is his nephew. Suit is being contested by defendants by filing a written statement, wherein they denied the execution of the WILL by the deceased. A stand has been taken by them that the WILL is the result of impersonation and fraud. On the basis of the pleadings of the parties, Trial Court framed the following issues on 18.11.2017:-

- “(i) Whether the plaintiff is entitled to the relief of declaration, as prayed for? OPP
- (ii) Whether the plaintiff is entitled to the alternate relief of joint possession, as prayed for? OPP
- (iii) Whether the plaintiff is entitled to the consequential relief of permanent injunction, as prayed for? OPP
- (iv) Whether the suit of the plaintiff is not maintainable in the present form as the plaintiff has concealed the material facts from this Court? OPD
- (v) Whether the plaintiff has no locus standi to file the present suit? OPD
- (vi) Relief.”



6. Plaintiff led ocular and documentary evidence in support of his claim. He closed his evidence in the affirmative on the statement of his counsel on 25.04.2019, Annexure P-3. Order passed by the Trial Court is reproduced here under:-

“Ld. Counsel for plaintiff has tendered into evidence document Ex.P4 to Ex.P8 and closed his evidence in affirmative.

Now case is adjourned to 09.05.2019 for evidence of defendant. Witnesses of defendant be summoned on furnishing of list of witnesses and depositing their PF/DM.”

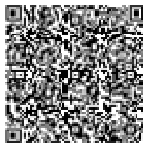
7. After evidence of the defendants was closed by an order of the Court on 21.11.2019, proceedings were fixed for rebuttal evidence, if any, when the plaintiff furnished the list of witnesses, Annexure P-4, to be examined in rebuttal evidence. An application, Annexure P5, was filed by the petitioners for striking out of the list of witnesses, which after contest, has been declined by the Trial Court vide order impugned herein.

8. A perusal of the issues, reproduced above, framed by the Trial Court shows that the onus of the first three issues was on the plaintiff. The burden was on the plaintiff to establish as to whether the deceased had executed a valid WILL in his favour and as to whether he was entitled to the alternative relief sought by him. The onus of the remaining issues, which pertain to the maintainability of the suit, concealment of material facts and the locus standi of the plaintiff to institute the suit, was on the defendants. After examining the witnesses, plaintiff closed his evidence in the affirmative on 25.04.2019. In other words, he did not reserve any right to lead evidence in rebuttal.



9. Interpreting Order 18 Rule 3 CPC, a Division Bench of this Court in *Surjit Singh and others versus Jagtar Singh and others, 2007 (1) PLR 552*, has held that this provision does not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on him. The rule provides the parties with an option either to produce the evidence in support of the issues or to reserve their rights by making a statement to this effect. Similar view has been taken by another Division Bench in *Jagdev Singh and others versus Darshan Singh and others, 2007 (1) RCR (Civil) 794*. In *Avtar Singh and another versus Baldev Singh and others, 2015 (1) PLR 230*, another Division Bench of this Court 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 defendants as regards the issues onus of which is upon the defendant, he shall have to reserve his right. It has been clarified that the plaintiff shall have to reserve his option either when he closes his evidence in the affirmative, or in any case, before the other party begins its evidence. In case, he fails to reserve such a right, his right to lead evidence in rebuttal would stand forfeited.

10. Adverting to the facts of the present case, it is evident that the plaintiff closed his evidence on 25.04.2019. He neither reserved a right to lead evidence in rebuttal, nor has he exercised such a right at any time before the defendants led their evidence. Therefore, the plaintiff has lost his right to lead evidence in rebuttal. Trial Court has clearly erred in rejecting the application filed by the petitioners-defendants No.1 and 2. The order passed by the Trial Court is perverse and cannot be sustained.



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11. For the foregoing reasons, revision petition is allowed. Impugned order, Annexure P-7, is set aside. List of witnesses furnished by respondent No.1-plaintiff, is struck off, and he shall not be permitted to lead evidence in rebuttal.

(SUVIR SEHGAL)
JUDGE

03.03.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes