

2025:PHHC:115932



CR-3866-2019

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1.

CR-3866-2019

Vanisha Dutta

... Petitioner

Versus

Sarojni Dutta

... Respondent

2.

CR-5083-2019

Vanisha Dutta

... Petitioner

Versus

Sarojni Dutta

... Respondent

Date of decision : 28.08.2025

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Raj Kumar Kakkar, Advocate
for the petitioner.

Mr.Nakul Sharma, Advocate and
Ms.Shivani Sharma, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

1. This order will dispose of two revision petitions challenging two orders arising from the proceedings in the same suit. The first revision petition i.e., CR-3866-2019 titled as “Vanisha Dutta Versus Sarojni Dutta”



has been filed under Article 227 of the Constitution of India for setting aside the order dated 31.01.2019 passed by the Civil Judge (Jr.Div.), Ferozepur, vide which the application filed by the petitioner for grant of permission to examine handwriting and finger print expert to take photographs of signature of Pushpa Rani Dutta on various documents has been dismissed. The second revision petition i.e., CR-5083-2019 titled as “Vanisha Dutta Versus Sarojni Dutta” has been filed under Article 227 of the Constitution of India for setting aside the subsequent order dated 02.07.2019 passed by the trial Court in the same suit vide which another application dated 18.04.2019 for grant of permission to handwriting and finger print expert to take the photographs of signatures of Pushpa Rani Dutta on various documents has been dismissed.

ARGUMENTS ON BEHAL FOF THE PETITIONER

2. Learned counsel for the petitioner has submitted that in the present case, the suit was filed by the petitioner Vanisha Dutta for declaration with respect to the property of Pushpa Rani Dutta and in the said suit, it was stated that the Wills dated 12.02.1998 and 19.04.2001 executed by the said Pushpa Rani Dutta in favour of the respondent-defendant were executed under undue influence. It is submitted that the petitioner had relied upon a letter written in the year 2002 by the said Pushpa Rani Dutta to the father of the petitioner disclosing the fact that there was undue influence in executing the Wills. It is submitted that the said letter is very necessary to be proved for the purpose of proving the plea raised by the petitioner of undue influence in the suit. It is submitted that for the said reason, the



application (Annexure P-5 in CR-3866-2019) was filed for grant of permission to Sanjeev Kumar Sharma, Handwriting and Finger Prints Expert to take photographs of signatures of Pushpa Rani Dutta on the two Wills so that the same could be compared with the signatures on the said letter mark P-1. It is submitted that the said application has been wrongly rejected vide impugned order dated 31.01.2019 without considering the fact that the comparison on the signatures is very necessary in the present case to establish the plea of undue influence.

3. It is further submitted that subsequent to the passing of order dated 31.01.2019, the respondent had moved an application for placing on record the certified copy of plaint titled as “Vanisha Dutta vs. Vijay Dutta etc.” and the said application for additional evidence was allowed on 01.04.2019 and thereafter the petitioner again moved the same application, for grant of permission to Sanjeev Kumar Sharma, Handwriting and Finger Prints Expert to take photographs of signatures of Pushpa Rani Dutta on the two Wills and the letter Mark P-1. It is submitted that since additional evidence had been allowed, thus, fresh cause of action arose in favour of the petitioner and thus, the said application had to be allowed but the same has been wrongly rejected by the trial Court vide order dated 02.07.2019. It is submitted that the first order dated 31.01.2019 has been challenged in CR-3866-2019 and the second order dated 02.07.2019 has been challenged in CR-5083-2019. It is prayed that both the revision petitions be allowed and the impugned orders be set aside and the applications filed by the petitioner be allowed.

**ARGUMENTS ON BEHALF OF THE RESPONDENT**

4. Learned counsel for the respondent, on the other hand, has vehemently opposed the present revision petitions. It is submitted that the pleas with respect undue influence as well as there being a letter, were made by the plaintiff in the suit itself and for the said purpose, has highlighted paragraphs 4 and 5 of the plaint. It is submitted that in the written statement, the plea with respect to there being a letter was specifically denied and it was stated in paragraph 5 of the written statement that the said letter is forged and fabricated document and that replication was also filed to the same by the petitioner-plaintiff. It is argued that it was for the plaintiff-petitioner to prove the said letter while leading affirmative evidence but the same was not done. It is stated that the plaintiff's evidence was closed on 09.05.2018 and the petitioner did not reserve any right to lead rebuttal evidence nor was there any such issue on which the said rebuttal evidence could be led. It is submitted that thereafter, the defendant-respondent had led her evidence and also closed her evidence on 26.11.2018 and that it is only subsequent to the same, the present application was moved. It is submitted that the said application has been rightly dismissed as the petitioner neither reserved her right nor was there any issue on which the proposed rebuttal evidence could be led. In support of his arguments, learned counsel for the respondent has relied upon the judgment of the Division Bench of this Court passed in the case of "***Avtar Singh and another vs. Baldev Singh and others***" ***CR-2203-2010 decided on 21.11.2014***. It is further submitted that the petitioner never chose to



challenge the said order dated 31.01.2019 immediately after passing of the same and had got listed both the revision petitions after much delay, after the passing of the subsequent order dated 02.07.2019. It is further submitted that once the first application was rejected, then, on the principle of constructive res judicata, which also applies to different stages of the same proceeding, the second application on the same plea was not maintainable and has also been rightly dismissed by the trial Court vide order dated 02.07.2019. It is further submitted that even a perusal of the order dated 01.04.2019 would show that only a plaint was produced by the respondent-defendant in additional evidence and the petitioner-plaintiff was given one chance for rebuttal evidence to the additional evidence so led and thus, it was not open for the petitioner to lead evidence regarding which the onus was on the petitioner and on which aspect, she had to lead evidence in the affirmative. It is thus prayed that both the revision petitions are meritless and deserve to be dismissed.

ANALYSIS & FINDINGS

5. This Court has heard learned counsel for the parties and has perused the paper book of both the petitions and finds that the impugned orders passed in both the revisions petitions dated 31.01.2019 as well as order dated 02.07.2019 are in accordance with law and deserve to be upheld and both the revision petitions are meritless and deserve to be dismissed for the reasons stated hereinafter.

6. It is not in dispute that the present petitioner Vanisha Dutta had filed a civil suit for declaration against the respondent-defendant Sarojni



Dutta to the effect that the plaintiff was the owner in joint possession of the property in question. A perusal of the plaint (Annexure P-1 in CR-3866-2019) would show that in paragraph 4, it was the plea of the present petitioner that the two Wills executed by the admitted owner Pushpa Rani Dutta in favour of her daughter Sarojni Dutta were obtained on account of undue influence. In paragraph 5, the plea was raised by the plaintiff-petitioner to the effect that a letter was written by the said Pushpa Rani Dutta to her son mentioning about there being undue influence. Paragraph 5 of the plaint is reproduced hereinbelow:-

*“5. That relationship of all the legal heir's of Pushpa Dutta were cordial with their mother and there was no occasion for her to discard the other legal heir's from the their right's in the property owned by Pushpa Rani Dutta. **It is worth mentioning here that in the year 2002, Pushpa Rani Dutta wrote a letter to her son Vipin Kumar** and she disclosed all the facts in that as to how under the influence Saroj Rani and Bhagwant Soi she executed Will in favour of Saroj Rani and she now knows that she was cheated and influenced by her daughter and marginal witnesses as well as scribe to grab the valuable property in question. She further stated that Bhagwant Soi is the only person who is destroying our house and he is person who wants to take the benefits of the same. **She specifically mentioned in the letter that she will execute another Will in favour of her all legal heir's meaning thereby the earlier Will's of Pushpa Rani were null and void on account of being executed under the influence of Saroj Rani Dutta as well as Bhagwant Soi, who inconnivance with other witness and scribe got executed Will in favour of Saroj Rani Dutta.**”*



7. In the written statement filed on 19.09.2016 (Annexure P-3 in CR-3866-2019), the fact that there was any undue influence was specifically denied and in paragraph 5 of the written statement, with respect to plea of the letter allegedly written in the year 2002, it was specifically stated that no such letter was written by Pushpa Rani Dutta and the same was never sent and the same was false, forged and fabricated document and had been manipulated by the plaintiff. Paragraph 5 of the written statement is reproduced hereinbelow:-

*“5. That para no.5 of the petition as stated is wrong and hence denied. It is wrong that the relationship of all the legal heirs of Pushpa Dutta were cordial with their mother or there was no occasion for her to discard the other legal heirs. **Smt. Pushpa Dutta testator has executed a legal, valid and genuine will and the reason for ignoring the other legal heirs has been duly mentioned in detail in the same. It is wrong that on the year 2002, Pushpa Rani Dutta wrote a letter to her son Vipin Kumar or disclosed all the facts in that as to how under the influence of defendant and Bhagwant Soi, she executed will in favour of Saroj Dutta answering defendant. The alleged letter is false, forged and fabricated document and has not wrote by Pushpa Rani Dutta and never sent the same to Vipin Kumar as alleged in this para. The contents of the alleged letter are not of Smt. Pushpa Rani Dutta and the same has been manipulated by the plaintiff in order to create a ground for filing the present suit. The answering defendant is not bound by the contents of the alleged letter, which is false, forged and fabricated one.**”*

8. A replication was also filed to the said written statement. It is thus apparent that the petitioner, who had set up the said letter in order to



prove her plea, was required to prove the existence and due execution of the said letter and also the fact that the said letter was signed by Pushpa Rani Dutta in the affirmative, at the time of leading her evidence. It is not in dispute that no application was filed by the petitioner for comparing the signature and even the said document is stated to be a marked document i.e., Mark P-1 and has not been exhibited during the course of trial. It is also not in dispute that the evidence of the petitioner-plaintiff was closed on 09.05.2018 and no right to lead rebuttal evidence was reserved by the petitioner. The observations made in the impugned order to the said effect have not been disputed before this Court. The defendant had also led her evidence and had closed her evidence on 26.11.2018. It was only thereafter that the application dated 10.12.2018 was filed. The said application was opposed by the respondent-defendant by raising various objections including the objection that the letter Mark P-1 had not been proved on file in accordance with law and the petitioner-plaintiff had already led her evidence and moreover there was no such issue under which the said evidence could be led in rebuttal.

9. The trial Court vide order dated 31.01.2019 (impugned order in CR-3866-2019) had dismissed the said application by observing that the petitioner at the time of closing her evidence had not reserved her right of rebuttal and the application was moved at the final stage of the case after the evidence of the defendant had also been closed and thus, the same was not permissible. It was observed that the plaintiff-petitioner had due knowledge of the document Mark P-1 from the date of filing of the suit and thus, the



petitioner should have proved the same while leading affirmative evidence. It was further observed that the application filed was not supported by an affidavit nor its contents were verified.

10. The said order is in accordance with law and deserves to be upheld. It is not in dispute that the petitioner at the time of closing her evidence on 09.05.2018 had not reserved her right of rebuttal. The Division Bench of this Court in the case of *Avtar Singh and another (supra)*, while answering the reference having been made to the Division Bench, held that the plaintiff has an 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 led by the defendant with respect to the issues the onus to prove of which is upon the defendant, then, he shall reserve his right with respect to the same and the said reservation of right has to be either when he closes evidence in affirmative or in any case before the other party begins his evidence and in case he fails to reserve such right in terms of the provisions of Order 18 Rule 3 CPC, then his right to lead evidence in rebuttal would stand forfeited. The relevant portion of the said judgment is reproduced hereinbelow:-

“Question No.1 i.e. whether it is mandatory for the trial court to provide an opportunity to the plaintiff to lead evidence in rebuttal only in those cases where he had reserved his right of rebuttal?”

6. Division Bench of this court in *Surjit Singh's case (supra)*, while relying upon a decision of an earlier Division Bench in *Jaswant Kaur and another v. Devinder Singh*, AIR



1983 Punjab and Haryana 210 (DB) and a Single Bench in National Fertilizers Ltd. v. Municipal Committee, Bhatinda and another, AIR 1982 Punjab and Haryana 432(1), crystallized the true import of the provisions of Order 18 Rule 3. And the principle of law that has been enunciated is that 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 proof of which is upon the defendant, he shall have to reserve his right. Further, he 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. But if he fails to reserve any such right, in terms of the provision of Order 18 Rule 3 CPC, his right to lead evidence in rebuttal would stand forfeited.

Question No.2 i.e. whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendant?

From a plain reading of the provisions of Order 18 Rule 3 CPC and the principle of law enunciated by the Division Bench in Surjit Singh's case (supra), it is axiomatic that in a case, where there are several issues, and the burden of proof some of which lies upon the defendant, plaintiff who is conscious to the lis and alive to the matter in issue, he can adduce his evidence in entirety vis-a-vis all the issues including those onus of proof of which is upon the defendant. Or having led the evidence in affirmative, as regards the issues, the onus of proof of which is upon the plaintiff himself, he can reserve his right to lead evidence in rebuttal. Needless to assert, leading evidence in rebuttal is also a part of the plaintiff's evidence. Whether he leads it in one go qua all the issues and close his evidence or reserve his right to lead rebuttal evidence.”



11. From the abovesaid judgment, it is apparent that the right of rebuttal to the plaintiff-petitioner would be with respect to issues on which the onus is on the defendant and the said right will have to be specifically reserved at the time of closing the evidence in affirmative or at the stage prior to which defendant leads his evidence. In case no such right is reserved, then the said right is forfeited. The law laid down in the abovesaid judgment fully applies in the present case, for upholding the impugned order as admittedly the petitioner had never reserved her right to lead rebuttal evidence. Learned counsel for the petitioner has not been able to point out any issue the onus of which was on the defendant, in rebuttal to which the petitioner could be permitted to lead evidence with respect to proving the letter regarding which the petitioner herself had relied in her plaint and which document was specifically denied in the written statement. Moreover, at any rate, it was for the petitioner to have proved her case as pleaded in paragraph 5 in the plaint, which was specifically denied in the written statement, in the affirmative. Thus, the order dated 31.01.2019 is in accordance with law and deserves to be upheld and CR-3886 being meritless deserves to be dismissed.

12. It would also be relevant to note that the said impugned order dated 31.01.2019 was not challenged immediately thereafter and the petitioner participated in the proceedings and it is only subsequent to the order dated 02.07.2019, which is the impugned order in the CR-5083-2019, that the petitioner chose to pursue both the revision petitions and the first



date on which both the revision petitions came for hearing was 25.09.2019 i.e., more than 7 months after the passing of the impugned order dated 31.01.2019.

13. Even challenge to the order dated 02.07.2019, vide which similar application dated 18.04.2019 (Annexure P-7 in CR-5083-2019) as was earlier filed and in which verbatim the same prayer was made, is meritless. The trial Court has rightly rejected the said application vide order dated 02.07.2019 (Annexure P-9 in CR-5083-2019) by observing that once, at an earlier stage, similar application for similar relief had been rejected, then, the second application was not maintainable and the mere fact that the respondent-defendant had produced on record a copy of plaint in additional evidence would not give a right to the petitioner-plaintiff to move the same application at a subsequent stage, without the earlier order dated 31.01.2019 having been challenged much less set aside. It is a matter of settled law that the principle of constructive res judicata also applies to various stages in the same case. In case an issue or a particular point is decided against a party at a particular stage and the same is not challenged before the higher court, then, subsequently in the same proceedings the said party is restrained from raising the said issue/point. There cannot be two different orders with respect to the same prayer at different stages of the same suit. Moreover, by virtue of additional evidence, the respondent-defendant had only sought to place on record the certified copy of the plaint of a civil suit filed by the present petitioner Vanisha Dutta against Vijay Dutta, Neeraj Dutta and Sarojni Dutta. Vide order dated 01.04.2019, the said application was



allowed, since the present petitioner had not raised any objection and the case was adjourned to 19.04.2019 for rebuttal evidence to the additional evidence. The order dated 01.04.2019 is reproduced hereinbelow:-

*“Present: Shri RK Kakkar, Advocate, counsel for the plaintiff.
Shri SP Prinja, Advocate, counsel for the defendant.*

The learned counsel for the plaintiff suffered statement that he has no objection if application for producing additional evidence filed by defendant is allowed subject to payment of costs. In view of his statement, the application stands allowed subject to payment of costs of Rs. 100/- to be paid to the opposite party. The learned counsel for the defendant tendered into additional evidence some document and closed his additional evidence. Now to come up on 19.04.2019 for rebuttal evidence to the additional evidence.

Date of order: 01.04.2019.”

A perusal of the above order would show that the petitioner was permitted to lead rebuttal evidence only to the additional evidence led by the respondent-defendant and thus, could possibly lead evidence only to rebut the plaint of the earlier suit, having been produced on record. The same would not permit the petitioner to lead evidence, which the petitioner should have led in the affirmative and regarding which no right to lead rebuttal evidence had been reserved. Moreover, the order dated 01.04.2019 very clearly states that rebuttal evidence can only be to the additional evidence which has been led and the said order has not been challenged and



rather the petitioner has relied upon the said order. Although the applications filed by the petitioner would apart from being against settled law, would also lead to delay in the adjudication of the suit and would cause prejudice to the right of the defendant, who had lead evidence after considering the evidence led by the petitioner-plaintiff.

14. Keeping in view the above said facts and circumstances, both the impugned orders are in accordance with law and deserve to be upheld and both the revision petitions being meritless deserve to be dismissed and are accordingly dismissed.

(VIKAS BAHL)
JUDGE

August 28, 2025.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No