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

CR-4075-2019 (O&M)

Date of Decision : 03.11.2025

MEENA RANI AND ORS

.... Petitioners

VERSUS

PANKAJ BINDAL

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vineet Chaudhary, Advocate for the petitioners.

Mr. Aayush Gupta, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 26.02.2019 (Annexure P-5) passed by the learned Additional Civil Judge (Senior Division), Naraingarh whereby the application filed by the plaintiff-respondent herein to examine Handwriting Expert at the time of rebuttal evidence was allowed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for decree for possession by way of specific performance of the agreement to sell dated 03.02.2011 alleged to have been executed by one Sh. Ramesh Kaushik (the deceased husband of defendant-petitioner No.1 and the deceased father of defendant-petitioners No.2 and 3 herein) qua land measuring 8 Kanal situated at Village Tapri Shaid, Hadbast No.102, Tehsil Naraingarh, District Ambala as fully described in the plaint on

payment of ₹3,50,000 as balance sale consideration as out of total sale consideration of ₹5,00,000, ₹1,50,000 having been paid as earnest money to late Sh. Ramesh Kaushik. In the written statement filed by the defendant-petitioners herein, in reply to para No.1 on merits, a specific stand taken was that Sh. Ramesh Kaushik never entered into any alleged agreement to sell dated 03.02.2011 as per his share in the land. It was further the stand that neither was there any reason for selling the entire share for a lump sum amount of ₹5,00,000 nor was the transaction at the market rate prevailing at the given time. It was further averred that Sh. Ramesh Kaushik had engaged the plaintiff-respondent as his lawyer to file a civil suit and that the agreement to sell was a result of manipulation in order to usurp the lawful rights of the legal heirs of Sh. Ramesh Kaushik after his death. Vide order dated 16.07.2015 the following issues were framed by the Trial Court :

- (i) Whether the plaintiff is entitled for decree for possession as prayed for ? OPP
- (ii) If issue no. 1 is proved then whether the plaintiff is entitled decree for permanent injunction restraining the defendants ? OPP
- (iii) Whether the suit of the plaintiff is not maintainable in its present form ? OPD
- (iv) Whether the plaintiff has no locus standi to file the present suit ? OPD
- (v) Whether the plaintiff has got no cause of action to file the present suit ? OPD

(vi) Whether the plaintiff has concealed the true and material facts from the Hon'ble Court ? OPD

(vii) Relief.

3. During the course of evidence, PW-2 Abhay Kumar Goel appeared as an attesting witness and proved the agreement to sell dated 03.02.2011. In his cross-examination this witness clearly stated that the vendee and the vendor had not signed in his presence and that the signatures were already taken prior to his signatures. After the defendant-petitioners had closed their evidence, an application was filed by the plaintiff-respondent herein to examine a Fingerprint Expert in rebuttal by taking photographs of the disputed and the standard signatures of late Sh. Ramesh Chand (as mentioned in the application). Reply was filed to the said application. Vide the impugned order the said application was allowed holding that the plaintiff-respondent had initially discharged his burden by examining the attesting witnesses, notary public and stamp vendor and that the defendant-petitioners had hit the plaintiff-respondent by surprise by examining the Handwriting Expert and as such the plaintiff-respondent should be allowed to examine his own Handwriting Expert. Aggrieved by the same the present revision petition has been preferred by the defendant-petitioners herein.

4. Learned counsel for the defendant-petitioners would contend that the onus of issue No.1 was cast upon the plaintiff-respondent and any evidence qua the genuineness or otherwise of the agreement to sell was to be led in the affirmative. It is further the contention of the learned counsel that a party cannot be allowed to lead evidence in rebuttal of the issue the onus of

which had been cast upon that party. In support of his argument, the learned counsel for the defendant-petitioners has relied upon the judgment passed by the Hon'ble Division Bench in **Surjit Singh & Ors. V/s Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** and **Avtar Singh and Anr. V/s Baldev Singh & Ors. [2015 (5) RCR (Civil) 625]**.

5. *Per contra*, the learned counsel for the plaintiff-respondent would contend that in the entire written statement the signatures of Ramesh Kaushik were not denied on the agreement to sell and it was only for the first time in the cross-examination that DW-1 Rajnish Kaushik i.e. the defendant-petitioner No.3 herein denied the signatures of Ramesh Kaushik on the agreement to sell and as such the necessity to file the application for leading the evidence of the Fingerprint Expert in rebuttal evidence.

6. Heard.

7. In the present case, in response to para No.1 of the plaint, the defendant-petitioners in the written statement specifically took the stand that Ramesh Kaushik never entered into any alleged agreement to sell dated 03.02.2011. Once the very agreement to sell was denied as ever having been entered into by Ramesh Kaushik, it was incumbent upon the plaintiff-respondent to prove the genuineness of the agreement in the affirmative. The plaintiff-respondent cannot be permitted to lead evidence in rebuttal as the onus of issue No.1 was cast upon the plaintiff-respondent.

8. A Division Bench in the case of **Surjit Singh & Ors. V/s 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).”

Further, in the case of **Avtar Singh and Anr. V/s Baldev Singh & Ors. [2015 (5) RCR (Civil) 625]** it was held as under :

“Provisions of Order 18 Rule 2(3) cannot be construed or constructed to mean that after defendant had rendered his response to the whole case, plaintiff could still have a right to lead evidence in rebuttal. Such an interpretation or construction of the provision would be distorting the provision beyond its content. This perception and understanding further finds complete resonance in the provision of Order 18 Rule 3 CPC, as only the said provision deals with a situation where there are several issues and the burden of proof some of which lies upon the defendant.”

9. The argument of the learned counsel for the plaintiff-respondent that para No.1 of the written statement on merits spoke only of manipulation and as such the plaintiff-respondent was taken by surprise when in the cross-examination the witness of the defendant-petitioners denied the signatures of Ramesh Kaushik on the agreement to sell itself, deserves to be rejected. As noted earlier, in para No.1 of the written statement, a very categorical stand was taken wherein it was denied that Ramesh Kaushik had entered into an agreement to sell dated 03.02.2011 in favour of the plaintiff-respondent, as

alleged, in the presence of the marginal witnesses. It was further reiterated that Ramesh Kaushik never entered into any alleged agreement to sell dated 03.02.2011. Thereafter, a reference was made to the alleged manipulations which were made in the agreement to sell, which was stated to have been made by the lawyer of Ramesh Kaushik in order to usurp the property of Ramesh Kaushik. Once the very agreement to sell was denied, the onus lays upon the plaintiff-respondent to prove issue No.1 in the affirmative. If any Handwriting Expert was to be examined, the same had to be examined in the affirmative. The reasoning given by the Trial Court that since the defendant-petitioners had examined a Handwriting Expert and as such the plaintiff-respondent was taken by surprise therefore he should be allowed to lead his evidence by examining a Handwriting Expert, is not sustainable in law. It is not a case where for the first time the agreement to sell had been denied. There was clear and complete denial regarding any alleged agreement to sell having been executed by Ramesh Kaushik. In such a case, the plaintiff-respondent had to prove the genuineness of the agreement to sell in the affirmative. Further still, one of the witnesses, namely, Abhay Kumar Goel, who was alleged to be the marginal witness of the agreement to sell, stepped into the witness box as PW-2. In his cross-examination this witness specifically denied that the vendor and the vendee had put their signatures in his presence. It is only in an endeavour now to fill up the lacunae in the case as set up by the plaintiff-respondent that he wants to examine the Fingerprint Expert in rebuttal evidence. In view of the law laid down in **Surjit Singh & Ors.** and **Avtar Singh and Anr.** (supra), the same cannot be permitted.

10. In view of the above, the present revision petition is allowed and the impugned order herein is set aside. The application filed by the plaintiff-respondent to examine a Handwriting Expert stands dismissed. Pending applications, if any, also stand disposed off.

11. It is made clear that any observations made herein shall not be treated as an expression of opinion on the merits of the case.

03.11.2025

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*