



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

119**CR-2771-2026****Date of decision:16.04.2026**

NIRMAL KUMAR

...PETITIONER

VERSUS

NARENDER KUMAR (DECEASED) THROUGH HIS L.RS. AND
ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sunil Sihag, Advocate
for petitioner.

PARMOD GOYAL, J. (ORAL)

Present civil revision petition has been preferred under Article 227 of the Constitution of India by petitioner-plaintiff-plaintiff being aggrieved by impugned order dated 25.02.2026 passed by learned Additional Civil Judge (Senior Division) Punhana, whereby application filed by him under Order XVIII Rule 3 read with Section 151 of Code of Civil Procedure, 1908 ('CPC') for grant of permission to lead rebuttal evidence has been dismissed.

2. Admittedly, in suit for declaration, petitioner-plaintiff has claimed that he is landlord and exclusive owner of suit property and revenue records reflecting respondent-defendant No.2 to be owner are incorrect and liable to be corrected. Reliance was placed on deed of dissolution dated 31.03.2008. Along with relief of declaration, petitioner-plaintiff had also sought relief of permanent injunction restraining respondents-defendants from interfering in his peaceful possession over the suit property. Petitioner-

plaintiff, in alternative, sought mandatory injunction for restoring his possession if respondents-defendants manage to oust him from suit property.

3. Respondents-defendants contested the suit by filing written statement and claimed that petitioner-plaintiff has raised a false, forged and fabricated plea of partnership to usurp the suit property. Respondent-defendant No.2 specifically took the stand that he never signed any such document i.e. dissolution deed as being relied by petitioner-plaintiff and petitioner-plaintiff is liable to be prosecuted in Criminal Court.

4. By way of replication, petitioner-plaintiff again reiterated deed of dissolution one having been signed by respondent-defendant No.2 to be genuine.

5. On the basis of above assertions, following issues were framed vide order dated 25.08.2014:-

- i. *Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction, as prayed for ? OPP*
- ii. *Whether the suit of the plaintiff is not maintainable ? OPD*
- iii. *Whether the plaintiff has no locus standi to file and maintain the present suit ? OPD*
- iv. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD*
- v. *Whether the present suit is bad for non-joinder and mis-joinder of the parties ? OPD*
- vi. *Whether the present suit is barred by under Section 69 of the Indian Partnership Act ? OPD*
- vii. *Relief.*

6. Thereafter, petitioner-plaintiff was given opportunity to lead

evidence, which was closed after due opportunity on 08.02.2017. Thereafter, respondents-defendants took chance to lead evidence in support of their case, which was also concluded on 01.03.2018. Thereafter, matter remained pending for rebuttal, if any, and arguments. However, in between suit was dismissed for non-prosecution and was restored back on 19.08.2025. Thereafter, again the matter was fixed for rebuttal evidence, if any, and arguments. When the case was taken up for arguments, petitioner-plaintiff sought to examine handwriting expert to rebut evidence led by defendants, who in his defence had examined handwriting expert.

7. It is the case of petitioner-plaintiff that since respondents-defendants have examined handwriting expert and no specific issue regarding validity of dissolution deed was framed, therefore, petitioner-plaintiff is within his right to lead evidence of expert in his rebuttal.

8. The learned Court of First Instance, however, had found that no right of rebuttal to examine handwriting expert has accrued to petitioner-plaintiff as the witness sought to be examined by petitioner-plaintiff could have only been examined in affirmative. As due opportunity was granted and availed by petitioner-plaintiff to lead his evidence and prove dissolution deed stated to be executed by respondent-defendant No.2, therefore, no rebuttal to handwriting expert is maintainable in rebuttal.

9. Learned counsel for petitioner-plaintiff has argued that he has duly examined attesting witness, scribe as well as himself in support of his case and witness examined by respondents-defendants as handwriting expert is a private expert and not a person from official laboratory, therefore he needs to counter the same by leading the rebuttal evidence.

10. On consideration, I do not find any justification to allow the petitioner-plaintiff to lead rebuttal evidence in the facts and circumstances of the present case. The claim of petitioner-plaintiff in present case was totally on the basis of dissolution deed whereby he had become owner of the suit property. On the other hand, respondent-defendant No.2 had specifically denied the execution of said dissolution deed and had claimed that he had not signed said document being relied upon by petitioner-plaintiff and same is forged and fabricated.

11. It was on the basis of these pleadings, issue No.1 was framed, which reads as under:-

“Whether the plaintiff is entitled to decree for declaration with consequential relief of mandatory injunction, as prayed for ? OPP”

12. The onus to prove this issue was placed on petitioner-plaintiff. Therefore, issue No.1 clearly places onus on petitioner-plaintiff to prove dissolution deed in order to succeed and get a decree for declaration in his favour. It was only upon showing that dissolution deed was duly executed by respondent-defendant No.2, petitioner-plaintiff can succeed on issue No.1. For this reason, petitioner-plaintiff has also examined attesting witness, scribe as well as himself to prove execution of dissolution deed by defendant No.2 by way of his evidence in affirmative. Once petitioner-plaintiff had led his evidence, it was upon respondents-defendants to rebut the same. The examination of handwriting expert by respondents-defendants is only rebuttal to the evidence led by petitioner-plaintiff and expert has not been examined to prove any of the issues, onus of which was upon respondents-

defendant.

13. As per provisions of Order XVIII Rule 3 of CPC, the plaintiff can reserve his right to lead his evidence in rebuttal only where the onus of any issue is upon defendant and any evidence is led by defendant to prove the said issue(s) in view of onus placed upon him. Therefore, the scope of rebuttal is limited as it allows plaintiff to lead evidence to counter the evidence of defendant only where any evidence is led by defendant to prove any issue onus of which is upon defendant. Therefore, the evidence which could be led in affirmative cannot be allowed to be led in rebuttal as the process of granting due opportunity would never come to an end and if any evidence is led in rebuttal, the defendant would again ask for opportunity to rebut evidence led by plaintiff. The scope of rebuttal is restricted to evidence led by defendant on issues where the onus is upon him. Any evidence which can be led in affirmative by plaintiff cannot be led by plaintiff by way of rebuttal as the same is beyond the scope of Order XVIII Rule 3 of CPC.

14. Learned counsel for petitioner-plaintiff has placed reliance upon judgments titled as **Ranjit Singh Vs. Mehfil Restaurant**, 2008 (1) RCR (Civil) 768. Perusal of abovesaid judgment goes to show that in said case, rebuttal evidence was allowed as defendant led evidence on issues, onus whereof was on defendant. Therefore, the facts and circumstances in the judgment cited by learned counsel for petitioner-plaintiff are different and said case has no applicability to facts of present case where the evidence of expert led by respondent-defendant No.2 is not to prove any issue but is in rebuttal to evidence led by petitioner-plaintiff in affirmative.

15. Learned counsel has also placed reliance upon judgment of this

Court passed in **Avtar Singh and Another Vs. Baldev Singh and Ors.**, 2015 (5) RCR (civil) 625. Here again, after considering the scope of Order XVIII Rule 3 of CPC, this Court had clearly laid down that whenever any evidence is led by defendant on issue, onus of which is purely upon him, in all such cases, plaintiff is entitled to lead the rebuttal evidence despite having led evidence in affirmative. Again, in cited case, rebuttal was allowed only in case where the defendant had led evidence as regards to issue, onus of which was on him.

16. Learned counsel for petitioner-plaintiff has argued that even in cases where evidence has been led in affirmative on the issues burden of which is upon plaintiff, even on those issues, plaintiff can reserve his right to lead evidence in rebuttal. However, this assertion made by learned counsel for petitioner-plaintiff is without any basis as in present case, no such right was reserved by plaintiff at the time of closure of his evidence.

17. For ready reference, Order XVII Rule 3 of CPC is reproduced as under:-

“3. Evidence where several issues.—Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.”

18. Reading of Order XVIII Rule 3 of CPC goes to show that whenever there are several issues and burden to prove some of them lies on

defendant, the party beginning may opt either to produce his evidence on those issues or reserve it by way of answer to evidence produced by the other party. In latter case, the party beginning may produce evidence on those issues after the other party has produced all its evidence and other party may then reply specially on the evidence so produced by the party beginning but the party beginning will then be entitled to reply generally on the whole case. The Order XVIII Rule 3 of CPC, therefore, clearly makes out that right to rebuttal would arise if instead of leading his evidence in affirmative, defendant is called upon to lead evidence and in that case, plaintiff would be within his right to lead evidence to rebut the evidence led by defendant at the first instance. It is also clear from reading of Order XVIII Rule 3 of CPC that whenever onus is upon defendant to prove any issue, if any evidence is led on said issue, then rebuttal can be adduced by plaintiff and while adducing rebuttal to evidence led by defendant on any issue, onus of which was upon defendant, the plaintiff may reply generally on the whole case, however said liberty can only be granted when any evidence is led by defendant on issue, onus of which is upon defendant. In case where defendant has not led any evidence on any issue, onus of which was upon defendant, in such a case again right of rebuttal would not arise in favour of plaintiff and merely because defendant has given any evidence in rebuttal to evidence led in affirmative by plaintiff, would not justify case of plaintiff to give rebuttal to the evidence led by defendant. The right of rebuttal, therefore, arises in favour of plaintiff only where any evidence is led by defendant on an issue, onus of which is upon him and in case no such evidence is led, no right of rebuttal arises in favor of plaintiff.

19. In present case also, none of the judgments cited by learned counsel for petitioner-plaintiff has got any applicability as no evidence has been led by respondents-defendants to prove any issue, onus of which was upon respondents-defendant and therefore no right was accrued in favour of petitioner-plaintiff to lead rebuttal evidence and accordingly, no error with impugned order can be found.

20. Revision petition is accordingly dismissed.

21. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)
JUDGE

16.04.2026

Sunil Chander

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>