



113

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

CR-4092-2024 (O&M)

Date of Decision : 06.02.2026

GAURAV BHANOT

.... Petitioner

VERSUS

MOHINDER SINGH AHLUWALIA AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aayush Gupta, Advocate for the petitioner.

Mr. Mukul Aggarwal, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 21.05.2024 passed by the learned Civil Judge (Junior Division), Ludhiana whereby an application filed by plaintiff No.6-petitioner herein for summoning two witnesses was dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiffs (including the petitioner herein) filed a suit for declaration that sale deed bearing Vasika No.1456 dated 19.04.1991 alleged to have been executed through defendant-respondent No.1 in favour of defendant-respondent No.2 regarding the house constructed on plot No.54/C comprised in Khasra No.408, Khata No.198/212 situated in Village Rajpura (now known as Udham Singh Nagar), Tehsil and District Ludhiana was illegal, null and void and an act of fraud and forgery committed by the defendant-respondents No.1 and 2 herein.

It was the case set up that the sale deed dated 19.04.1991 had been executed by defendant-respondent No.1 in favour of his son (defendant-respondent No.2) on the basis of a forged power of attorney dated 29.10.1985. Prayer in the suit was for setting aside the sale deed as the same was an act of fraud and forgery committed by defendant-respondents No.1 and 2. The defendant-respondents No.1 and 2 filed their written statement. After both the parties led their evidence, at the stage of rebuttal evidence, plaintiff No.6-petitioner herein filed an application 'for summoning the witnesses on payment of process fee/diet money'. The said application was dismissed and rebuttal evidence of the plaintiffs (including the petitioner herein) was closed by order. It was noted in the order that the case has been pending since 1997 and amongst the Action Plan cases. The case was fixed for final arguments on 28.05.2024.

3. Learned counsel for plaintiff No.6-petiitioner herein would contend that plaintiff No.6-petitioner wants to lead rebuttal evidence on issue No.4 which issue reads as under :

'4. Whether Ashwani handed over attorney in 1985 and defendants are living in property since 1988/1991 ? OPD'

It is further the contention that the original general power of attorney was not available with plaintiff No.6-petitioner and it came on record for the first time when the defendant-respondents No.1 and 2 led their evidence.

4. *Per contra*, learned counsel for defendant-respondent No.2 has contended that the suit in the present case was filed in 1997. The plaintiffs (including the petitioner herein) commenced their evidence in 2002 and closed

it in the affirmative vide order dated 17.12.2014. Thereafter the evidence of the defendant-respondents No.1 and 2 was closed by order vide order dated 22.04.2024. The plaintiff No.6-petitioner filed the application for summoning the two witnesses on payment of process fee/diet money. It is the contention of the learned counsel that the application does not even state whether the evidence now sought to be led was in the rebuttal or as additional evidence. It is further the contention that the application now filed by the plaintiff No.6-petitioner is to examine the handwriting expert qua the general power of attorney on the basis of which the sale deed was executed; that the said evidence was to be led in the affirmative on issue No.1 as reframed by the Trial Court and that issue No.4 has nothing to do with the validity of the general power of attorney as argued by the learned counsel for the plaintiff No.6-petitioner. Learned counsel has pointed out that vide order dated 13.06.2002 the original general power of attorney was placed on the record and was put in a sealed cover and that there was nothing stopping the plaintiff No.6-petitioner from seeking permission of the Trial Court to get the signatures on the said power of attorney examined by a handwriting expert.

5. Heard.

6. In the present case the suit is for declaration that the sale deed, based on the general power of attorney, was an act of fraud and forgery. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled to declaration and injunction prayed for ? OPP

2. Whether defendants are *bona fide* purchasers without notice for consideration which was paid *via* Ashwani after sales of Husani Pure ? OPD
3. Whether the suit is hit by estoppel, limitation easement and Transfer of Property Act ? OPD
4. Whether Ashwani handed over attorney in 1985 and defendants are living in property since 1988/1991 ? OPD
5. Whether defendants are renting out property without objections and in 1995 there existed phones of tenants in the property ? OPD
6. Relief.

The issue, whether the general power of attorney was a genuine power of attorney or a fraud and fabricated one, was covered under issue No.1. Issue No.4 has nothing to do with the genuineness of the general power of attorney as issue No.4 is only whether Ashwani handed over attorney in 1985 and defendants have been living in property since 1988/1991. Since the issue of genuineness of the power of attorney was covered under issue No.1, the onus of which was upon the plaintiffs (including the petitioner herein), it was incumbent upon them to have led the evidence in the affirmative.

7. The argument of the learned counsel for plaintiff No.6-petitioner that the said document came on the record only when the defendant-respondents No.1 and 2 led their evidence is belied by the order dated 13.06.2002 passed by the Trial Court wherein it has been stated that the original power of attorney was placed on the record and was put in a sealed

cover. This was much prior to the closing of the evidence by the plaintiffs (including the petitioner herein). The plaintiff No.6-petitioner herein made no effort to seek permission of the Court to get the signatures on the power of attorney examined by a handwriting expert from 2002 to 2014 when they closed their evidence in the affirmative. Now at this stage, the plaintiff No.6-petitioner had filed the application for leading the evidence of an expert witness, which application itself is not clear as to under what provision of law the same was filed. Since the plaintiff No.6-petitioner wants to prove now that the general power of attorney was forged and fabricated, the said evidence cannot be allowed in rebuttal as the onus to prove the same was on the plaintiffs (including the petitioner herein) and as such the same was to be proved in the affirmative.

8. A Division Bench of this Court in the case of **Surjit Singh & Ors. Versus 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).'

If it is to be treated as an application for additional evidence, even then the application *sans* merit and does not meet the requirements for permission to lead additional evidence. In any case the evidence which ought to have been led in the affirmative cannot now, by way of the present application, be allowed to be led in rebuttal.

9. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

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

06.02.2026

Aman Jain

(ALKA SARIN)

JUDGE

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