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(2013) 09 P&H CK 0297

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1116 of 2012 (O and M)

Shisha Singh

APPELLANT

Vs

Raj Kaur and Others

RESPONDENT

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Date of Decision: Sept. 4, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 3, 151
- Constitution of India, 1950 - Article 227

Citation: (2014) 173 PLR 572

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: Akshay Jindal, for the Appellant; B.S. Sudan, Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision: Dismissed

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### Judgement

Paramjeet Singh, J.

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 14.02.2012 (Annexure P/6) passed by the learned Additional Civil Judge (Senior Division), Assandh, whereby application of the petitioner under Order 18 Rule 3 read with Section 151 CPC for producing the evidence in rebuttal, has been dismissed. Brief facts relevant for disposal of the revision petition are that the petitioner and his brother late Sardul Singh filed a suit for declaration with consequential relief of permanent injunction and joint possession. During the pendency of the suit, application was filed under Order 18 Rule 3 read with Section 151 CPC for leading evidence in rebuttal. In rebuttal, the petitioner-petitioner wanted to bring on record the statement made by Sahab Singh in a civil suit No. 552 of 2007 titled "Amir Singh and others vs. Shisha Singh and others" and in another suit titled "Sardool Singh and others vs. Sahab Singh and others". The said application was opposed and consequently dismissed by the trial Court vide impugned order dated 14.02.2012 (Annexure P/6). Hence, this revision

petition.

2. I have heard learned counsel for the parties and perused the record.

3. Vide order dated 05.08.2011, the trial Court framed the following issues:-

1. Whether the sale deed no. 1670 dated 21.09.2006 and mutation no. 12622 dated 21.09.2006 are illegal, null and void and not binding upon the rights of plaintiffs? OPP

2. Whether suit of the plaintiffs is not maintainable in the present form? OPD

3. Whether plaintiffs have no cause of action and locus standi to file the present suit? OPD

4. Whether suit of the plaintiffs is barred by limitation? OPD

5. Whether plaintiffs are estopped from filing the suit by their own act and conduct? OPD

6. Relief.

4. The onus to proof with regard to issue no. 1, which is the main issue was on the plaintiffs. The plaintiff could only have lead evidence in affirmative. In view of issue no. 1, issue nos. 2 to 5 are only legal issues. As such, against them no rebuttal can be allowed. The statement of Sahab Singh cannot be lead in rebuttal evidence.

5. The Division Bench of this Court in [Surjit Singh and Others Vs. Jagtar Singh and Others](#), has held as under:-

15. In our opinion, Order 18 Rule 3 of the CPC 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 CPC. 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).

6. In view of the settled proposition of law, the view expressed by the Division Bench of this Court in Surjit Singh's case (supra) is the only logical and realistic view in respect of interpretation of Order 18 Rule 3 of the Code of Civil Procedure. Thus, the right to rebuttal cannot be exercised unless the onus of an issue is upon other party or the party beginning reserved its right in this regard before the evidence of other party commenced. The petitioner-plaintiff has no right to lead evidence in rebuttal in respect of issue no. 1 as the onus to prove the same was on petitioner and the right to lead evidence was not reserved.

7. In view of the above, I do not find any illegality or perversity in the impugned order. Dismissed.