
Sunni Central Board of Waqfs and Others Vs Gopal Singh Visharad and Others

Civil Miscellaneous Application No. 18 (o) of 2000

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Oct. 19, 2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 18 Rule 1, Order 18 Rule 3, Order 23 Rule 1, Order 23 Rule 2, Order 23 Rule 3

Citation: (2001) 3 UPLBEC 2331

Hon'ble Judges: S.R. Alam, J; D.K. Trivedi, J; Bhanwar Singh, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Bhanwar Singh, J.

The plaintiffs of other Original Suit No. 4 of 1989, short listed as O.O.S. have filed this application under Order XVIII,

Rule 3 and Section 151 CPC. praying for permission to reserve their right to produce evidence on issues No. I(b), 4, 11, 13, 14, 19(a) and 19(c)

by way of answer to the evidence that may be produced by the defendants. In the alternative, the plaintiffs have sought for an appropriate relief the

Court may deem to be just and proper in the circumstances of the case.

2. To recapitulate the facts and circumstances leading the plaintiffs to move the aforesaid application, it appears to be relevant to mention that four

other original suits No. 1 of 1989, 3 of 1989, 4 of 1989 and 5 of 1989 pertaining to the disputed structure which was popularly known as Ram

Janam Bhumi Babri Masjid at Ayodhya, district Faizabad, are pending trial before this Court. The other Original Suit No. 4 of 1989 was filed by

the Sunni Central Board of Waqfs, U.P. and others against Gopal Singh Visharad and others. The O.O.S. No. 1 of 1989, the O.O.S. No. 3 of

1989 and O.O.S. No. 5 of 1989 are connected with the aforesaid suit. Most of the parties are common in all the original suits and since common

issues were involved, these suits were consolidated for trial. Whereas the Sunni Central Board of Waqfs, U.P. and others claimed that the disputed

structure which was demolished on 6.12.1992, was a mosque with land appurtenant thereto, the contention of the defendant No. 2, Sri Paramhans

Ram Chander Das, defendant No. 3, Sri Mahant Rameshwar Das, Mahant Sarbarkar and the defendant No. 13, Sri Dliaram Das is that it was a

religious place with a temple, popularly known as "Ram Janam Bhumi, i. e. the birth place of Lord Ram. The other original Suit No. 4 of 1989 was

termed to be as the leading case and after the issues were framed, the plaintiffs of other original Suit No. 4 of 1989 Sunni Central Board of Waqfs

and others were directed to lead their evidence. Accordingly, the plaintiffs made their statement under Order XVIII, Rule 2(1) CPC and thereafter

started adducing their oral evidence in support of the case. In the process of examination of the plaintiffs witnesses, 16 witnesses have been

examined so far. The testimony of P.W. 16 Prof. Suraj Bhan was closed on 10.8.2000 and thereafter the hearing was adjourned to September

11, 2000.

3. The application under consideration has been moved with the allegations that the plaintiffs are not in a position to close their oral evidence as

they are not yet aware of the nature and contents of the evidence likely to be produced by the defendants on issues No. I(b), 4, 11, 13, 14, 19(a)

and 19(c). As a matter of fact, the burden of proof of the aforesaid issues lies on the defendants and the plaintiffs have the option either to produce

their evidence on these issues in continuation of the other evidence being led or to reserve their right by way of answer to the evidence to be

adduced by the other parties. It is alleged further that in case, the plaintiffs do not reserve their right to lead their evidence on the aforesaid issues

by way of answer, a serious prejudice is likely to be caused to them as they may not be able to produce necessary and proper evidence on the

above issues in order to assist this Court for a just decision. Further, some of the documents proposed to be relied upon the defendants have not

yet been admitted in evidence and, as such, the plaintiffs are not in a position to lead evidence in rebuttal of such documents. Therefore, in these

circumstances, as the plaintiffs have pleaded, it would be expedient and in the ends of justice to permit them to produce their evidence on the

issues referred to above by way of answer to the evidence of the defendants. It has, however, been left to the discretion of the Court to pass any

other appropriate order that may be deemed just and proper in the circumstances of the case.

4. The defendant No. 2, Paramhans Mahant Ram Chandra Das, defendant No. 3, Nirmohi Akhara and the defendant No 33, Dharaxn Das have

filed written objections against this application. Other defendants and parties to the other suits have, though, not filed their objection in writing but

they have adopted the objections filed by the aforesaid defendants and resisted the application on the similar grounds. As alleged by the defendant

No. 3, the application moved by the plaintiffs is misconceived and against the law and established procedure. According to the provisions of

Order XVIII, Rule 2 C PC, the plaintiffs having right to begin to lead their evidence stated their case indicating the relevancy of each document

they brought on record and the nature of oral evidence which they proposed to adduce. It was thereafter that they began to examine their

witnesses. The plaintiffs dealt with their case at the initial stage while making a statement on 23.7.1996 and did not signify their option in clear terms

to reserve the right of leading their evidence in rebuttal under the provisions of Rule 3. After making their statement, they proceeded to examine

their witnesses and in the process have, by now, examined as many as 16 witnesses. Therefore, the plaintiffs have now no legal right for another

chance to lead their evidence in rebuttal as it is not permissible under the Code of Civil Procedure. If the plaintiffs really desired to keep their

option open and reserve their right to lead evidence in rebuttal of the defendants evidence, they should have given a categorical statement under

Order XVIII, Rule 2 CPC but since they did not prefer to exercise that option and not only that but also adduced their evidence on all issues

including the ones in question, they cannot now be permitted to reserve their right to lead their evidence on some issues under Order XVIII, Rule 3

CPC and close their evidence on other points. If the plaintiffs are allowed at this stage to produce their evidence in rebuttal, it would be highly

prejudicial to the case of the defendants apart from the fact that the course adopted shall be against the established procedure and practice.

5. The defendants No. 2, Paramhans Mahant Ram Chandra Das has contended that the option of leading evidence given by a plaintiff on issues

of which the burden lies on a defendant can be reserved latest upto the point of time when the plaintiff opens his case by stating it under Order

XVIII, Rule 2 CPC. Since the plaintiffs, Sunni Central Board of Waqf and others failed to exercise that option at the appropriate stage and led

their evidence without having their rights reserved, their present move is mala fide and an attempt to thwart the proceedings.

6. The defendant No. 3, Nirmohi Akhara pleaded that in accordance with the terms of Rules 2 and 3 as applicable in Uttar Pradesh, the plaintiffs

could have very well exercised the right to reserve their evidence at the time of making statement under Order XVIII, Rule 2 CPC and not

thereafter. The plaintiffs have given a long list of witnesses and have not yet discharged any one of them even after examining 16 witnesses. It

appears that the plaintiffs have a device to take adjournment for preparation of certain other evidence.

7. Mr. Justice Deoki Nandan (Retd.) who is one of the plaintiffs in other Original Suit No. 5 of 1989, has also opposed the application in hand on

the similar grounds as enumerated above.

8. We have neared learned Counsel for all the parties and perused the record.

Precisely, the legal issue required to be determined at this stage is as to whether the plaintiffs, Sunni Central Board of Waqfs, U.P. and others, can,

at this stage, reserve their right to lead evidence on issues No. I(b), 4, 11, 13, 14, 19(a) and 19(c) after examination of the defendants' witnesses.

In this context, it would be relevant to make a reference to Order XVIII, Rules 1, 2 and 3 CPC. Rule 1 postulates that the plaintiff has the right to

begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the

defendant the plaintiff is not entitled to any part of the relief which he seeks. In which case the defendant has the right to begin. Here, the plaintiffs"

case is that the disputed property was a mosque and the members of Mohammedan community offered their prayers before it was usurped by

Hindu community. The defendants did not admit the plaintiffs' case and pleaded their own cause that the entire property in dispute was known as

Ram Janam Bhumi with a temple thereon. Naturally, on the face of these rival contentions, the Sunni Central Board of Waqfs was legally entitled

under the provisions of Rule 1, as referred to above, to begin their evidence and accordingly they, exercising their right, started examining their

witnesses and prior to that a detailed statement under Rule 2 of Order XVIII CPC was made on their behalf. Before, we advert to the said

statement, it would be relevant to quote Rules 2 and 3, as amended by the Allahabad High Court, as follows :

2. Statement and production of evidence.-(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned,

the party having the right to begin shall state his case, indicating the relevancy of each of the documents produced by him, and the nature of the oral

evidence which he proposes to adduce and shall then call his witnesses in support of the issues which he is bound to prove.

(2) The other party shall then state his case in the manner aforesaid and produce his evidence (if any).

(3).....,

(4).....

3. (1) 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

state his case in the manner aforesaid and produce his evidence on those issues or reserve the statement of his case and the production of his

evidence on those issues by way of answer to the evidence produced by the other party; and in the latter case, the party beginning may state his

case in the manner aforesaid and produce his evidence on those issues after the other party has produced all his evidence.

(2).....

9. If a combined thought is given to the provisions of Rules 2 and 3, as reproduced above, it would emerge out that a plaintiff having right to begin

will state his case indicating about the relevant facts and the documents and the nature of oral evidence. If, however, he desires to reserve his right

to lead evidence by way of answer on certain issues, the burden of which lies on the other party, he should exercise his option in clear terms. Mr.

Z. Jilani, learned Counsel for the plaintiffs of other Original Suit No. 4 of 1989 made his statement under Rule 2 and explained the plaintiffs' stand

vis-a-vis production of evidence. The Court's order of July 23, 1996 may be quoted as below :

Learned Counsel Mr. Z. Jilani for the plaintiff in the leading Suit stated his case and explained the relevancy of his documents before leading

evidence in O.O.S. No. 4 of 1989 and also the documents which he proposes to rely in the other connected suit namely O.O.S. Nos. 1, 3 and 5

of 1989 respectively.

10. A careful examination of the statement would reveal that the plaintiffs had clear concept while disclosing their case and the layout plan of the

evidence they had in mind to lead. It is significant to note, that the learned Counsel for the plaintiffs did not give even an inclination to reserve the

right of making statement and producing of his evidence on the issues No. 1(b), 4, 11, 13, 14, 19(a) and 19(c). In other words, Mr. Jilani did not

consider it at all to take recourse to the provisions of Rule 3. According to the description of the disputed property their witnesses gave out, it was

a Babri Masjid and a graveyard and the mosque was always being used as a place of worship for offering prayers by the Muslims until a large

crowd of Hindus entered the said mosque with the intention of damaging and defiling; and desecrated the same by placing idols inside. The nature

of oral evidence adduced by the plaintiffs related to all the issues in question. As is evident, the plaintiffs' witnesses have testified that the property

in suit had always remained as a mosque and the same was never a temple. The other category of evidence comprised of the witnesses who were

experts of History and who deposed with reference to the authentic books of History and religion that the mosque was not constructed at the site

of any temple by demolishing any such temple and that the property in suit was not the birth of place of Lord Ram (Janam Bhumi).

11. It is thus clear that the plaintiffs had thought of at the relevant stage that they would adduce the entire evidence by examining all witnesses

supporting their case of the property in dispute being a mosque and graveyard and also that it was never a temple nor a Ram Janam Bhumi. If we

advert to the issues 1(b), 4, 11, 13, 14, 19(a) and 19(c), it would be manifestly clear that all these issues pertain to the important plea of the

defendants that the disputed property was always a temple site and it was known as Ram Janam Bhumi. To make things clear, it would be relevant

to quote the issues in question as follows :

1(b) (As recast by this Court). Whether the building has been constructed on the site of an alleged Hindu temple after demolishing the same as

alleged by defendant No. 13? If so, its effect?

(A recast by this Court). Whether the Hindus in general and the devotees of Bhagwan Shri Ram in particular have perfected right of prayers at the

site by adverse and continuous possession and Title as of right for more than the statutory period of time by way of prescription as alleged by the

defendants?

11. (As framed by Civil Judge). Is the property in suit the site of Janam Bhumi of Sri Ram Chandarji?"".

13. (As recast by this Court). Whether the Hindus in general and defendants in particular have the right to worship the Charans and Sita Rasoi

and other idols and other objects of worship, if any, existing in or upon the property in suit?

14. (As framed by this Court). Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been

visiting it as a sacred place of pilgrimage as of right since times immemorial. If so, its effect?

19(a) (Additional issue framed by this Court). Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the

Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to

be visited by devotees for purposes of worship? If so whether the property in dispute continues to vest in the said deities?

19(c) (Additional issue framed by this Court). Whether any portion of the property in suit was as a place of worship by the Hindus immediately

prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the

Islamic tenets at the place in dispute.

12. Learned Counsel appearing for the defendants has drawn the Court's attention towards the statements of the witnesses who have already been

examined by the plaintiffs and contended with reference thereto that the plaintiffs have already exercised their right to lead evidence even on the

aforesaid issues and, therefore, they cannot reserve the right after they have crossed the crucial stage, not only by not keeping their right reserved

but also by leading evidence on all the issues pertaining to the minutes details thereof.

13. Now let us examine the statements of some of the witnesses who were examined by the plaintiffs and who deposed on the points in issue.

Reference may be made one by one to the testimony of the following witnesses :

P.W. 1 Mohd. Hashim

^-----22 fnlEcj] 1949 rd efLtn ds vUnj vkSj dksbZ ewfrZ ughs j[kh FkhA efLtn ds vUnj dHkh dksbZ iwtk ugha gqbZA mlesa

uekt+ gksrh FkhA tgdA~A~A½ ;g efLtn Fkh ogkA~A~A½ dHkh efUnj ughas Fkka vxj efUnj dks rksM+dj dksbZ efLtn ckcj us cuok;k gksrk rks dksbZ

eqqlyeku mlesa uekt+ ugha i<+rkA-----

;g lp gS fd 23 fnlEcj dks vylqcg ikS QVus ds igys lhuktsjh ls ewfrZ Hkou ds vUnj j[kh xbZ] ;g pksjh ls ugh j[kh xbZ FkhA-----

P.W.4 Mohd. Yaseen

^-----vkf[kjh ckj eSaus mlesa tqEes dh uekt+ vkt ls rdjhc 47 lky igys i<+h FkhA 22@23 fnlEcj]1949 dh jkr dks mlesa ewfrZ j[k nh

x;h FkhA blfy, uekt+ i<+uk :d x;k] lqcg ,syku gks x;k Fkka-----

efLtn esa dkys iRFkj Hkh yxs FksA ysfdu mu ij dksbZ nsok nsorkvksa dh rLohj ugha FkhA mu ij xeyksa dh "kDy ess Qwy ifRr;kA~A~A½ cuh

FkhaA-----

P.W. 6 Mohd. Unus Siddiqui

^^-----1949 tc ewfrZ;kÃ⁻Ã_çÃ½ efltn esa j[kh x;ha rks mlesa igys geus bl txg ij dHkh dksbZ ewfrZ ugha ns[khA 1949 rd eSaus efltn ;k

bl ds v gkrs esa dHkh fgUnqvksa dks dksbZ iwtk n" kZu djrs ugha ns[kkA 22 fnIEcj] 1949 rd bl efltn esa uekt+ i<+us ij dHkh dksbZ fdlh rjg dh

:dkoV ughs vk;hA-----

P. W. 7 Hasmat Ulla Ansari

^^ ----- tc ;s cqr j[kk x;k mlds ,d gÃ⁻Ã_çÃ½rk igys rd eSa ogkÃ⁻Ã_çÃ½ eqrokrc uekt+ i<+rk FkkA ;g cqr 22&23 fnIEcj] 1949 dh nfjE;kuh jkr

dks j[kk x;k FkkA-----

tqEes dh uekt+ ;k rks ckcjh efltn esa gksrh Fkh ;k dsoM+k dh efltn esa gksrh FkhA tgwj ds yM+ds Qk:[k] eks- gkf"ke] gkth egcwc] mlds

cM+s HkkbZ gkth vCnqy vgn mu yxsxksa esa ls gSa tks esjs lkFk ogkÃ⁻Ã_çÃ½ uekt+ i<+k djrs Fks vkSj vHkh rd ft+Unk gSaA 22 fnIEcj] 1949 rd

eSaus bl efltn esa u dHkh dksbZ ewfrZ ns[kh u fdlh dks iwtk ikB djrs ns[kkA geus dHkh ogkÃ⁻Ã_çÃ½ fgUnqvksa dks n" kZu ds fy, vkrs Hkh ugha

ns[kkA

P.W. 11 Mohd. Burhanduddin

^^ -----viuh rkyhe ds nkSjku eSaus fgUnqLrku dh rkjh[k dk eqrk;yk Hkh fd;k gS FkksM+k&cgqrA esjs bYe esa ,slk ughs gS fd

ckcj us v;ks/k esa fdlh efUnj dks rksM+dj efltn cuokbZ gksA esjs bYe ds eqrkfd ckcjh efltn dh rkehj fdlh efUnj dks rksM+dj ugha dh xbZA-

P.W. 12 Ram Shanker Upadhya

^^-----eSaus fgUnw /keZ dh dqN fdrkcsa i<+h gSa tSls fd rqylh nkl th dh jkepfjr ekul] ckYehdh th dh jkek;.k] jk/ks";ke "kqDy th

dh fy[kh jkek;.k euqLe`fr] f"koij;k.k] eRL;iqjku] fgUnw /keZ dh reke vkSj fdrkcsa o deZdk.M Hkh eSaus i<+s gSaSA ;kuh deZdk.M IEcU/kh

fdrkcsa i<+h gSaSA JhjekpUnz th dk tUe vkt ls yxHkx 9 yk[k o" kZ igys gqvK FkkA mudk tUe IR; ;qx esa gqvK FkkA ckYehdh th dh jkek;.k ds

vuqlkj mUgksaus yxHkx 11 gt+kj o" kZkZsa rd jkT; fd;k FkkA jkepfjr ekul dk fuekZ.k rqylhnkl th us v;ks/k esa nrqou dq.M ij fd;k Fkk mls olqu

dq.M dgrs gSaA jkepfjr ekul esa ;k rqylh nkl ds vU; fdlh lkfgR; esa ,slk dksbZ ft+dz ughs vkrk fd v;ks/k; esa Jhje ds efUnj dks rksM+dj dksbZ

efltn cuk;h x;h gksA fgUnw /keZ dh fdlh Hkh fdrkcsa ,slk dksbZ ft+dz ughs feyrk fd jkepUnz th dh tUeLFkyh ij ckcjh efltn cuk;h x;h gks ;k

jkepUnz gh dh deZLFkyh ogkÃ⁻Ã_çÃ½ ckdK gks tgkÃ⁻Ã_çÃ½ ckcjh efltn cuh gqbZ FkhA

eSa ml txg ij x;k gqvK gÃ⁻Ã_çÃ½w tgkÃ⁻Ã_çÃ½ ckcjh efltn cuh gqbZ FkhA eSa efltn ds vUnj Hkh x;k gqvK gÃ⁻Ã_çÃ½wA eSa 2 Qjoh 1986 dks x;k Fkk

vkSj eSaus ns[kk fd efltnksa esa tks ,d eSEcj lk gksrk gS ml ij ewfrZ j[kh gqbZ FkhA e;kZnk iq:" kksRre Jhje] lhrk th vkSj y{e.k dh

ewfrZ;kÃ⁻Ã_çÃ½ FkhA vf[kjh ckj eSa ml bekjr esa 1991 essa x;k FkkA vkf[kjh erZck tc eSa ogkÃ⁻Ã_çÃ½ x;k rks eSaus ns[kk fd dqN rCnhfy;kÃ⁻Ã_çÃ½

Fkha] dqN N= yxs gq, Fks vkSj ewfrZ flagklu ij FkhA txg rks djhc ogh Fkh FkksM+k cgqr b/kj&m/kj dk QdZ Fkka ml bekjr dh cukoV efLtn

tSlh Fkh vUnh Q"KZ ij Qls cus gq, FksA-----**

P.W. 13 Suresh Chand Misra

^^----- eSaus kckjh efLtn ds ckjs esa ;g >xM+k "kq: gksus ds ckn xgu v/;;u fd;k gSA esjs v/;;u ls ir yxk fd bl efLtn dk fuekZ.k

ehjckdh us djok;k Fkk vkSj bls cukus esa fdLh izdkj dh rksM+&QksM+ ugha dh x;h FkhA esjs v/;;u esa bl LFkku ij igys fdLh efUnj ds gksus dk

izek.k ugha feyrkA

-----esjs v/;;u ds vuqlkj Jhke th dk tUe LFkku kckjh efLtn okyh txg ij ugha curkA eSaus bafM;u bfrgkl dkaxzsl ds l= esa bl ckjs esa

,d isij Hkh izLrqr fd;k Fkka kckj ds bfrgkl ds ckjs esa ,d vyx fdrkc rks kckjukek gh gSA lkef;d esa rks ;gh ,d fdrkc gS ckdh bfrgkl dkjksa us vkSj

Hkh fdrkcas fy[kh gSA

P.W. 16 Suraj Bhan

^^-----fookfnr LFky ;kuh fd kckjh efLtn dks eSaus ekSds ij tkdj ns[kk Fkka eSaus ekSds ij fookfnr LFky ij uki[kkst Hkh fd;k Fkk

MĀ⁻Ā₁Ā¹/₂kĀ⁻Ā₁Ā¹/₂VeSu dh enn ls ,oa QksVksxzKj dh enn lsA vius "kks/k ds dk;Z esa eq>s dksbZ Hkh ,slk izek.k ugha feyk ftlls ;g dgk tk lds fd kckjh

efLtn fdLh eafnj dks fxjkdj cukbZ xbZ gkaA Jh izksQslj ch-ch-yky ,oa ,-ds-ukj;.k ds "kks/k ds vuqlkj v;ks/;k esa 7oha lnh ch-lh- ds igys vkcknh

ds gksus dk dksbZ izek.k ughsaaa feyrkA-----**

14. From the above quoted testimony of various witnesses, it is apparent that the plaintiffs have examined witnesses in support of their case and in

rebuttal of the defendants' avowal of the effect that there was a temple at the site of the dispute which was popularly known as Ram Janam

Bhumi. The above mentioned witnesses have also stated that the Hindus started worshipping an idol after forcibly installing it inside the mosque

structure in the year 1949 and as such they have no right of carrying on worshipping the deities. They have also led evidence that the mosque was

not constructed at the site of Hindu temple nor it was a place of Hindu worship prior to the year 1949. In this way, the plaintiffs have adduced their

evidence on all the issues in question. It is no doubt true that the burden of proving these issues lies on the defendants and the plaintiffs would have

been well within their rights under Order XVIII, Rule 3 CPC to exercise their option to lead evidence in rebuttal of the defendants witnesses but

since they did not prefer to choose that course, it will now be contrary to the provisions of Rule 3 if they are permitted to give their evidence in

rebuttal. Once a party having a right to begin decides to lead its evidence on all issues including those the, burden of proving which lies on the other

party without exercising the option to reserve its right to lead evidence in rebuttal, it cannot be permitted at any later stage to exercise the option as

postulated under Order XVIII, Rule 3 CPC. This view is fortified from the decision of Orissa High Court as Aratiya Kumar Panda v. Chintamani

Panda and Ors. AIR 1988 Ori 87. The principle of law laid down in that decision is as follows :

It is no doubt true that if the plaintiff at the outset chooses to call any evidence covered by the option contemplated under Order XVIII, Rule 2,

CPC he will not be permitted to give further evidence in rebuttal of the evidence produced by the defendants.

15. It was different that in that case, the plaintiff did not lead any evidence on the issue in question but he informed the Court that he would adduce

evidence in rebuttal on issue No. 8. But in the case in hand, similar is not the situation and the principle of law, quoted above, shall govern the

issue. It may, therefore, reasonably be held that the plaintiffs cannot after examining as many as 16 witnesses and leading their evidence on issues

involved through the testimonies of PW-1, PW-4, PW-6, PW-7, PW-11, PW-12, PW-13, PW-15 and PW-16, is now to be permitted to revert

back to the initial stage and exercise their option available to a party under Rule 3

16. The learned Counsel appearing for the plaintiffs (O.O.S. No. 4 of 1989) placed reliance upon the citations, Illapu Nookalamma v. Illapu

Simchachalam AIR 1969 AR 82, and Motibhai Prabhubhai v. Umedchand Kasalchand AIR 1956 Guj 52, wherein it was held that the plaintiff is

entitled to express his reservation to adduce evidence by way of rebuttal after the completion of the evidence on the side of the plaintiff and before

the commencement of the evidence for the defendant under Order XVIII, Rule 3, in respect of issues of which onus lies on the defendant.

17. A perusal of the above citations would, however, reveal a distinctive feature. In those cases, the plaintiff did not lead any evidence on the

relevant issues No. 8 and 9 nor reposed like the plaintiffs of the cases in hand to examine witnesses on all issues and further she disclosed before

the defendant to reserve her right to lead evidence in rebuttal on the aforesaid issues. Further, it is important to note that Rule 3 was not amended

by Gujarat High Court and Andhra Pradesh High Court on the parity of the Allahabad High Court amendment. According to the Allahabad High

Court amendment, a plaintiff at his option either state his case and produce evidence on the issues, burden of proving of which lies on the other

party or reserve the statement of his case and the production of his evidence by way of answer to the evidence of the other party. This sort of

amendment was not applicable to the plaintiff of the aforesaid citations of Andhra Pradesh and, therefore, she was given an option to reserve, her

right to lead evidence in rebuttal. Similar was the position in the other decision. For these distinguishing features, these citations are of no help to the

plaintiffs of O.O.S. No. 4 of 1989.

18. It is significant to note that in Andhra Pradesh, Punjab, Orissa, Himachal Pradesh and Delhi, a special provision by way of explanation was

available and it was to the effect that nothing in Rule 2 shall affect the jurisdiction of the Court for the reasons to be recorded in writing to direct

any party to examine any witness at any stage. It was in pursuance of this special feature that the Orissa High Court in Ramesh Lal Shantuka Vs.

Suresh Lal Shantuka , Illapu Nookalamma Vs. Illapu Simchachalam, , Gujarat High Court in Motibhai Prabhubhai v. Umedchand Kasalchand

AIR 1956 guj 52 , Punjab and Haryana High Court in Jaswant Kaur and Another Vs. Devinder Singh and Others, , Mysore High Court in S.

Chandra Keerti v. Abdul Gaffar and Ors. AIR 1971 karn17 , held that a plaintiff having right to begin evidence can exercise his option to lead

evidence in rebuttal at any stage before the defendant begins to produce bis evidence. Almost on the similar analogy being available under Rule 2,

sub-clause (4), the Jammu and Kashmir High Court in Mohd. Amin and Another Vs. Dalip Singh and Another, and Rajasthan High Court in

Inderjeet Singh v. Maharaj Raghunath Singh and Ors., AIR 1970 Rajasthan 278, held that the option to lead evidence in rebuttal can be exercised

before the other party enters evidence. All these citations are not attracted in favour of the plaintiffs case before this Court. Moreover, sub-rule (4)

of Rule 2 of Order XVIII has now been omitted by the CPC (Amendment) Act, 1999 which came into force with effect from 30.12.1999.

19. The Allahabad High Court Amendment of Rule 3 gives the plaintiff of a suit a right to elect one of the two courses open to him and to proceed

according to one elected by him. The following of a particular course is preceded by the act of electing that course. The result is that the stage of

election is preceded by the leading of evidence, the natural consequence whereof is that the intimation of that election to the Court should also be

at that state, otherwise there is no meaning in it. Thus, the stage when the party beginning the evidence has to apprise the Court of his election to

reserve his right of rebuttal evidence is when he begins.

20. Learned Counsel for the plaintiffs also questioned the validity of the Allahabad High Court Amendment by making a reference to the CPC

Amendment Act, 1976. Section 97 of the said Act provides that any amendment made or any provision inserted in the principal Act by the State

Legislature or a High Court before the commencement of this Act shall except in so far as such amendment or provision is inconsistent with the

provisions of the principal Act as amended by this Act stand repealed. It is significant to note that the CPC Amendment Act, 1976 did not bring

any amendment in Order XVIII. The original Rules 2 and 3 were substituted by the Allahabad High Court Amendment as has been quoted in

earlier part of this order and a careful perusal of the original and amended provisions by virtue of Allahabad High Court amendments would reveal

that no conflict has arisen by substituting these two Rules by way of Allahabad High Court amendment, rather there is a harmony between Rule 2

and Rule 3. It is only by way of explicit clarification that a provision has been made that a party having right to begin its evidence either proceeds in

accordance with the provisions of Rule 2 or reserve its right to making statement and leading evidence in rebuttal on some issues by way of answer

to the evidence of the other party. These provisions are neither repugnant to the original provisions of Rules 2 and 3 of Order XVIII CPC nor

there is any deviation therefrom. The amended provisions, as a matter of fact, supplement and harbour the principle of explanation by making

things explicit so as to help the parties by not leaving any room for confusion.

21. We are, therefore, inclined to hold that the contention of the plaintiffs' Counsel, regarding the Allahabad High Court Rules being in conflict with

the original Rules 2 and 3 of Order XVIII CPC is not sustainable.

22. However, in case this Court finds at a later stage that the plaintiffs' interest is likely to be prejudiced by production of such evidence by the

other party which the plaintiffs could have neither imagined nor had the opportunity to rebut the inherent powers of the Court may be invoked u/s

151 CPC and the Court may pass fresh orders as may be necessary in the ends of justice.

23. The crux of the matter is that since the plaintiffs have not exercised their option of keeping their right reserved to make statement and lead

evidence in rebuttal at the time of making their statement under Order XVIII, Rule 2 CPC, i.e., before they started leading evidence, they cannot

now be permitted to exercise that option at this stage and reserve their right to lead evidence in rebuttal under Rule 3 of Order XVIII.

24. In the result the C.M. Application No. 18(o) of 2000 is hereby rejected.