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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR-5964-2024 (O&M)****Reserved on : 16.10.2024****Date of Decision : 29.10.2024**

Kamlesh

... Petitioner(s)

Versus

Bimlesh Devi & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Namit Khurana, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been preferred by the defendant No.1-petitioner challenging the order dated 27.09.2024 (Annexure P-7) dismissing the application filed by the defendant No.1-petitioner for examining Parveen Kumar, Scribe of the Will dated 11.06.2014 and Amrik Singh Vasu, Notary Public who attested the Will dated 11.06.2014 in rebuttal to the additional evidence led by the plaintiff-respondent Nos.1 to 4 which was allowed by the Trial Court vide order dated 22.02.2024.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 to 4 herein filed a suit for declaration and permanent injunction claiming themselves to be joint owners in equal share of a residential house constructed on plot No.9, bearing H.No.B-6/1570, Property

No.276C127U135, Praladhpuri, Yamuna Nagar and challenging the Will dated 30.09.2014 of Late Ram Kumar Tyagi as being wrong, illegal, null and void. The defendant No.1-petitioner filed a written statement-cum-counter claim wherein she propounded a Will dated 11.06.2014 in her favour allegedly executed by Late Ram Kumar Tyagi. During the pendency of the suit the following additional issues were framed which read as under :

“2A. Whether plaintiff No.1 is legally wedded wife of Late Ram Kumar Tyagi and plaintiff No.2 to 4 are sons of plaintiff No.1 and Late Ram Kumar Tyagi ? OPP

2B. Whether Late Ram Kumar Tyagi was entitled to perform second marriage without giving divorce to his first wife i.e. plaintiff No.1 ? OPP

3A. Whether defendant No.1 is legally wedded wife of Late Ram Kumar Tyagi ? OPD”

Thereafter, an application was filed by the plaintiff-respondent Nos.1 to 4 for summoning Record Keeper, DC Office Yamuna Nagar alongwith permission to take photographs of thumb-impressions of Kamlesh (defendant No.1-petitioner herein) available on the original appeal and *vakalatnama* and to compare the same with the admitted thumb-impressions of Kamlesh available on the file of the present case in rebuttal. The said application was allowed by the Trial Court vide order dated 22.02.2024 and the plaintiff-respondent Nos.1 to 4 were allowed to examine the finger print expert in rebuttal evidence. Thereafter the present application was filed by the defendant No.1-petitioner to examine Parveen Kumar, Scribe of the Will dated 11.06.2014 and Amrik Singh Vasu, Notary Public who attested the Will dated 11.06.2014. The said application was contested by the plaintiff-

respondent Nos.1 to 4 and was dismissed by the Trial Court vide the impugned order dated 27.09.2024. Aggrieved by the same, the present revision petition has been filed.

3. Learned counsel for the defendant No.1-petitioner would contend that since the application for additional evidence filed by the plaintiff-respondent Nos.1 to 4 was allowed, hence, the defendant No.1-petitioner should be permitted to lead evidence in rebuttal. The learned counsel would further contend that once the additional issues were framed and the plaintiff-respondent Nos.1 to 4 were permitted to lead evidence, hence the present application ought to have been allowed by the Trial Court.

4. I have heard the learned counsel for the defendant No.1-petitioner.

5. In the present case, in the written statement-cum-counter claim filed by the defendant No.1-petitioner she has propounded a Will dated 11.06.2014. A specific issue being issue No.3 was framed as to “*Whether defendant No.1/counter claimant is entitled to a decree for declaration, as prayed for ? OPD/counter claimant*”. The onus of proving the Will propounded by the defendant No.1-petitioner was upon the defendant No.1-petitioner. It was hence incumbent on the defendant No.1-petitioner to have led the evidence in the affirmative.

6. A Division Bench of this Court in the case of **Surjit Singh & Ors. Vs. 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).”

7. The argument of the learned counsel for the defendant No.1-petitioner that since the application for additional evidence was allowed and certain additional issues were also framed, the defendant No.1-petitioner ought to have been given an opportunity to lead the evidence, deserves to be rejected inasmuch as the evidence now sought to be led by the defendant No.1-petitioner has no relevance to the additional issues or to the evidence led by the plaintiff-respondent Nos.1 to 4. Infact the evidence now sought to be led by the defendant No.1-petitioner pertains to a Will which was propounded by the defendant No.1-petitioner herself in the written statement/counter-claim and hence the defendant No.1-petitioner cannot now be permitted to lead the said evidence in rebuttal since the onus of issue No.3 was cast upon the defendant No.1-petitioner.

8. In view of the above, no fault can be found with the impugned order dated 27.09.2024 passed by the Trial Court. The present revision

petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.10.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO