

*Before Amit Rawal, J.*

**KRISHAN KUMAR GARG — Petitioner**

*versus*

**ANGINDER SINGH AND OTHERS — Respondents**

**CR No. 5583 of 2015**

December 16, 2016

***Constitution of India, 1950 — Art. 226 — Dismissal of application seeking additional evidence in rebuttal — In the absence of rebuttal issue, cannot be permitted to lead evidence either by way of additional evidence or under the garb of rebuttal evidence — Hence the present petition — Order 18 rule 3.***

*Held*, that the nature of the suit seeking specific performance and challenge to the decree as noticed above, the plaintiff has to stand on his legs, as onus of challenging the decree heavily relies upon him. Plaintiff having failed to discharge the onus in affirmative and the defendants led the evidence, the plaintiff, in the absence of rebuttal issue, cannot be permitted to lead evidence either by way of additional evidence or under the garb of rebuttal evidence.

(Para 4)

Rajeev Duggal, Advocate  
*for the petitioner.*

K.R. Dhawan, Advocate  
for respondent No.3.

Alka Chatrath, Advocate  
for respondent Nos.6 and 7 in C.R. No.5613 of 2015.

**AMIT RAWAL J. oral**

(1) This order of mine shall dispose of two revision petitions arising out of the dismissal of the application of the petitioner for leading additional evidence in rebuttal moved in the suits seeking specific performance of agreements to sell and as well as challenging the decree dated 15.10.2008. The petitioner-plaintiff is aggrieved of the impugned order dated 14.08.2015 whereby the application to take the assistance of expert for examining the signature on receipt has been dismissed.

(2) Mr. Rajeev Duggal, learned counsel appearing for the petitioner-plaintiff submits that he was not aware of the aforementioned fact and such fact only surfaced during the cross-examination of the defendant. It is in this backdrop of the matter, the aforementioned application was filed. The plaintiff had not disputed the signature of Agninder Singh. It is only with regard to other witnesses of compromise decree as Hari Krishan- defendant No.3 feigned ignorance about the witnesses of the receipt.

(3) Mr. K.R. Dhawan, learned counsel appearing for respondent No.3 and Ms. Alka Chatrath, learned counsel appearing for respondent Nos.6 and 7 in C.R. No.5613 of 2015 submit that the application aforementioned has rightly been dismissed as there is no issue of rebuttal. It was incumbent upon the plaintiff to lead evidence in affirmative as the plaintiff while claiming the relief of specific performance has also challenged the compromise decrees which cannot be permitted, rightly so, the application has been dismissed. In support of their contention, they rely upon three Division Bench judgments of this Court in *Avtar Singh and another* versus *Baldev Singh and others*<sup>1</sup>; *Surjit Singh and others* versus *Jagtar Singh and others*<sup>2</sup> and *Jagdev Singh and others* versus *Darshan Singh and others*<sup>3</sup>.

(4) I have heard learned counsel for the parties, appraised the paper book and of the view that the nature of the suit seeking specific performance and challenge to the decree as noticed above, the plaintiff has to stand on his own legs, as the onus of challenging the decree heavily relies upon him. Having failed to discharge the onus in affirmative and the defendants led the evidence, the plaintiff, in the absence of rebuttal issue, cannot be permitted to lead evidence either by way of additional evidence or under the garb of rebuttal evidence. This view of mine is fortified from the ratio decidendi culled in the judgments rendered by three Division Benches of this Court as referred to above. The relevant paragraphs reads as under:-

“Question No.1 i.e. whether it is mandatory for the trial court to provide an opportunity to the plaintiff to lead evidence in rebuttal only in those cases where he had reserved his right of rebuttal?”

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<sup>1</sup> 2015(1) PLR 230

<sup>2</sup> 2007(1) RCR (Civil) 537

<sup>3</sup> 2007(1) RCR (Civil) 794

6. Division Bench of this court in Surjit Singh's case (supra), while relying upon a decision of an earlier Division Bench in *Jaswant Kaur and another* versus *Devinder Singh*, AIR 1983 P&H 210 (DB) and a Single Bench in *National Fertilizers Ltd.* versus *Municipal Committee, Bhatinda and another*, AIR 1982 P&H 432(1), crystallized the true import of the provisions of Order 18 Rule 3. And the principle of law that has been enunciated is that plaintiff has the option to lead his entire evidence on all the issues, and in case, he intends to lead rebuttal evidence or answer the evidence that is to be led by the defendant, as regards the issues the onus of proof of which is upon the defendant, he shall have to reserve his right. Further, he shall have to exercise his option either when he closes his evidence in affirmative or in any case before the other party begins its evidence. But if he fails to reserve any such right, in terms of the provision of Order 18 Rule 3 CPC, his right to lead evidence in rebuttal would stand forfeited.

Question No.2 i.e. whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendant?

From a plain reading of the provisions of Order 18 Rule 3 CPC and the principle of law enunciated by the Division Bench in Surjit Singh's case (supra), it is axiomatic that in a case, where there are several issues, and the burden of proof some of which lies upon the defendant, plaintiff who is conscious to the lis and alive to the matter in issue, he can adduce his evidence in entirety vis-a-vis all the issues including those onus of proof of which is upon the defendant. Or having led the evidence in affirmative, as regards the issues, the onus of proof of which is upon the plaintiff himself, he can reserve his right to lead evidence in rebuttal. Needless to assert, leading evidence in rebuttal is also a part of the plaintiff's evidence. Whether he leads it in one go qua all the issues and close his evidence or reserve his right to lead rebuttal evidence.

(5) In view of the aforementioned fact, I am of the view that the orders under challenge are perfectly legal and justified. No ground for interference is made out. Both the revision petitions are dismissed.

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*Amit Aggarwal*