

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****138****CR-8568-2025(O&M)****Date of decision: 19.03.2026****Babita Gupta @ Babita & Others****...Petitioner(s)****Vs.****Vinod Kumar & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Varinder Singh Rana, Advocate
Mr. Jitesh Rana, Advocate
for the petitioners.

Mr. Shiv Murti Yadav, Advocate
for respondent No.1.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the defendants No.2, 4 and 5 laying challenge to the order dated 04.11.2025 (Annexure P10) passed by Additional Civil Judge (Senior Division), Dera Bassi, whereby application filed by the respondent No.1/plaintiff for examination of Expert to compare the signature of Omesh Chand Mehta on the alleged Will, has been allowed.

2. It is inter alia submitted by learned counsel for the petitioners that the learned trial Court was in error in allowing the application filed by the respondent No.1 for additional evidence in rebuttal as the respondent No.1 had closed his evidence vide order dated 10.08.2023 (Annexure P7) without



reserving his right to lead evidence in rebuttal. It is submitted that even otherwise, plaintiff could not be allowed to lead evidence in rebuttal as the onus to prove issues No.1 to 4 was upon the plaintiff. It is contended that once the onus to prove the said issues was upon the plaintiff, then he has no right to examine the Expert in rebuttal evidence in order to fill the lacuna. The plaintiff cannot be allowed to adduce rebuttal evidence to prove the issues, the onus whereof lies upon the plaintiff himself.

3. In support, learned counsel relies upon Division Bench judgment of Hon'ble Supreme Court in **"Avtar Singh & Another Vs. Baldev Singh & Others"** Civil Revision No.2203 of 2010 decided on 21.11.2014; Division Bench judgment of this Court in **Surjit Singh v. Jagtar Singh, (P&H) (DB) : Law Finder Doc ID # 124851**; and judgment of this Court in **"Rajesh Kumar & Others Vs. Babita"** CR-1209-2020 decided on 23.12.2022. It is accordingly prayed that the impugned order be set aside.

4. Per contra, learned counsel for the respondent No.1 submits that for proper adjudication of the matter, it is essential that respondent No.1 be permitted to lead Expert evidence. It is submitted that therefore, the impugned order suffers from no error, present Revision Petition accordingly deserves to be dismissed.

5. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the respondent no.1/plaintiff.



6. Brief facts of the case in chronological order are as under: -

20.08.2019: The plaintiff filed Civil Suit bearing CS-576-2019 dated 20.08.2019 (Annexure P1) for declaration on the basis of a Will dated 08.10.2017.

Annexure P2: Another Civil Suit (Annexure P2) dated 'Nil' bearing Civil Suit CS-869-2019 was filed by the plaintiff for declaration to the effect that the Will dated 16.11.2017 is fake and forged.

02.12.2019: The petitioners had filed written statement dated 02.12.2019 (Annexure P3) to the Civil Suit No.576-2019.

Annexure P5: The petitioner had also filed written statement (Annexure P5) dated 'Nil' to the Civil Suit to the Civil Suit 869-2019.

04.01.2022: Vide order dated 04.01.2022 (Annexure P6) issues were framed in both the Suits.

10.08.2023: Vide order dated 10.08.2023 (Annexure P7) evidence of the plaintiff was closed.

08.07.2025: Vide order dated 08.07.2025 (Annexure P8) application filed by the plaintiff for leading additional evidence was allowed.

Nil: Thereafter, the plaintiff was granted two opportunities to lead rebuttal evidence over issues the onus of which was upon the defendants. It is at this stage that the plaintiff moved the instant application dated 'Nil' (Annexure P9) for grant of permission to appoint Handwriting Expert.

04.11.2025: Vide impugned order 04.11.2025 (Annexure P10), the said application of the plaintiff has been allowed in cryptic manner as follows:



“To adjudicate the case properly, it is necessary to verify the signature of Omesh Chand Mehta on the Will in question. As such, the application in hand stands allowed, in the interest of justice and plaintiff is allowed to summon Hand Writing Expert to verify the signatures of Omesh Chand Mehta...”.

7. It is firstly to be noted that vide order dated 04.01.2022 (Annexure P6) the following issues were framed: -

“CIS No.:CS-576-2019 Case No.RT-129 of 26.08.2019, 04.05.2021

1. Whether the plaintiff is entitled to relief of Declaration as prayed for? OPP.

2. Whether the plaintiff is entitled to relief of Permanent Injunction as prayed for? OPP

3. Whether the plaintiff is entitled to relief of Mandatory Injunction as prayed for? OPP.

4. Whether the Will dated 08.10.2017 was executed by Sh. Omesh Chand Mehta in favour of the plaintiff? OPP

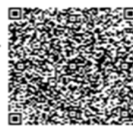
5. Whether the Will dated 16.11.2017 was executed in favour of the defendants no. 1 to 6 beyond all suspicious circumstances? OPD

6. Whether the plaintiff has not approached before this Hon'ble Court with the clean hands and has suppressed the true and material facts from the Hon'ble Court? OPD

7. Relief.

CIS No.:CS-869-2019 Case No.RT-130 of 17.12.2019, 04.05.2021

1. Whether the plaintiff is entitled to relief of Declaration as prayed for? OPP.



2. *Whether the plaintiff is entitled to relief of Permanent Injunction as prayed for? OPP*

3. *Whether the Will dated 08.10.2017 was executed by Sh. Omesh Chand Mehta in favour of the plaintiff? OPP*

4. *Whether the Will dated 16.11.2017. was executed in favour of the defendants no. 1 to 6 beyond all suspicious circumstances? OPD*

5. *Whether the present suit is not maintainable? OPD.*

6. *Whether the plaintiff has not approached before this Hon'ble Court with the clean hands? OPD.*

7. *Whether the plaintiff has got no locus standi to file the present suit? OPD.*

8. *Relief."*

(Emphasis added)

8. A bare reading of the above issues No.4 and 3 show that the onus to prove the Will dated 08.10.2017 propounded by the plaintiff, was upon the plaintiff himself. Once the onus to prove the alleged Will dated 08.10.2017 as authentic and genuine is upon the plaintiff, plaintiff has to prove the same by evidence in affirmative and cannot seek to do so in rebuttal evidence. As per the law laid down by this Court in "**Rajesh Kumar & Others Vs. Babita**" CR-1209-2020 decided on 23.12.2022, it is held that:-

"A perusal of the above shows that the onus to prove Issue No. 1 is on the respondent-plaintiff. As has been very persuasively argued by learned counsel for the petitioners, the respondent/plaintiff cannot be permitted to produce the said witness by way of evidence in rebuttal as, plaintiffs cannot as of



*right lead evidence in rebuttal on issues, the onus of proof of which is on them. In this regard, reference may be made to aforementioned judgment cited by Id. Counsel for the petitioner, passed by this Court in **Civil Revision No.1782 of 2015** titled as **“Rashpinder Singh Vs. Seema”** and headnote of the same is reproduced hereinbelow:-*

“Rebuttal evidence - Examination of handwriting and fingerprint expert - Suit for specific performance was filed on the basis of agreement to sell - In the written statement filed by the defendant, plea of denial was taken in respect of execution of agreement to sell - While leading affirmative evidence, the plaintiff did not adduce any evidence to prove due execution of agreement to sell removing all doubts with regard to the plea taken by the defendant in the written statement - Evidence of the plaintiff was closed and in the evidence of the defendant, she wants to examine handwriting and fingerprint expert to show that the signatures appearing on the agreement to sell are not that of defendant - Thereafter plaintiff sought to examine handwriting and fingerprint expert in rebuttal evidence - Plaintiff cannot lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself - Even if the plaintiff has reserved the right to lead evidence in rebuttal, the same is relatable to the issue as there was no such rebuttal issue in view of facts on record - Petition dismissed.” (Emphasis supplied)

Even SLP against above said case was dismissed by the Hon’ble Supreme Court vide order dated 08.02.2019 passed in SLP (Civil) Diary No.3580/2019.

*In this regard, reference may be made to Division Bench judgment of this Court in **CR 5513 of 1998** titled as **‘Jagdev Singh and others vs Darshan Singh and others’** wherein it has been inter-alia, held that “Issues framed and plaintiff leading evidence on issues in which onus of proof was on plaintiff – Opposite party beginning*



it's evidence – the plaintiffs cannot as of right lead evidence in rebuttal on issues, the onus of proof of which on them.”

*Reference may also be made to Division Bench judgment of this Court passed in **Civil Revision No. 2203 of 2010**, titled as '**Avtar Singh and another vs. Baldev Singh and others**'; and **Civil Revision No.1213 of 2005** titled as "**Surjit Singh and others Vs. Jagtar Singh and other**" headnote of which is reproduced hereinbelow:-*

“A. Civil Procedure Code, Order 18 Rule 3- Rebuttal evidence under Order 18 Rule 3 CPC - Whether the party can be permitted to lead evidence on the issues for which burden of proof was on that party - Held, (No) - Last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence - Question referred to D.B. answered accordingly. 2001(4) RCR(Civil) 565 (P&H) overruled. 1983 (2) RCR(Rent) 57 (P&H) relied.”

Para 15 of the said judgment is reproduced herein:-

“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).” (Emphasis supplied)

Accordingly, the ratio of the above said judgments is that the respondent/plaintiff cannot lead any evidence in rebuttal on the issues the onus to prove which, was upon the plaintiff. As per the above referred law, such evidence should have been led by the respondent by leading evidence in the affirmative...”.

9. Therefore, as per the above-said position in law, the respondent No.1 cannot examine a Handwriting Expert to prove the said Will while leading evidence in rebuttal.

10. This is especially so as in view of the fact that evidence of the respondent No.1 was closed on statement made by learned counsel for the respondent No.1 as recorded in zimni order dated 10.08.2023 (Annexure P7) to the following effect:-

“I close the evidence on behalf of the plaintiff.”.

11. Clearly therefore, the plaintiff had not reserved his right to lead evidence in rebuttal while closing his evidence. Admittedly, the plaintiff has sought declaration as co-owner of the suit property on the strength of the Will dated 08.10.2017 allegedly executed in favour of the plaintiff by the registered owner of the house namely Omesh Chand Mehta. Therefore, onus to prove the authenticity of the said Will was upon the plaintiff. It is the suit of the plaintiff and his rights qua the suit property have to be determined. That being



so, as per the ratio of the above judgments, the respondent No.1 cannot be permitted to lead evidence in rebuttal on the issues, the proving of which was upon him. It is especially so in view of the fact that respondent No.1/plaintiff did not reserve his right to lead evidence in rebuttal. The impugned order, therefore, is in violation of the law laid down in this regard.

12. In view of the above, present petition is **allowed**; and the impugned order dated 04.11.2025 is set aside.

13. Pending application(s) if any also stand(s) disposed of.

19.03.2026
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No