



CR-1731-2025 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CR-1731-2025 (O&M)
Reserved on :- 08.08.2025
Pronounced on:-11.08.2025**

Omwati and Another

....Petitioners

VERSUS

Kamla and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Amit Jain, Advocate for the appellants.

Mr. Lokesh Sinhal, Advocate and

Mr. Sukhandeep Singh, Advocate for respondent Nos. 1 and 2.

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MANDEEP PANNU J.

1. The present revision petition has been filed by the petitioners challenging the correctness of the impugned order dated 21.08.2024 (Annexure P-11) passed by the learned trial Court, whereby the application moved by contesting respondent Nos. 1 and 2/defendant Nos. 1 and 2 (hereinafter referred to as 'respondent Nos. 1 and 2') for exclusion of the affidavits filed by petitioners/proforma defendant Nos. 3 and 4 (hereinafter referred to as the 'petitioners') in their examination-in-chief was allowed.

2. In order to appreciate the controversy in its correct perspective, it would be apposite to notice the written statement filed by petitioners, which is placed on record as Annexure P-4. Perusal of the same reveals that petitioners have admitted the claim of the plaintiff- Satyajeet (proforma/respondent no.3- herein) except for denying that they are colluding with defendant Nos. 1 and 2. In the end, they have prayed that pleading is correct and admitted and that they have no objection in case the present case is decreed as prayed for. Since the petitioners



had admitted the claim of the plaintiff-Satyajeet, there is no dispute that they are non-contesting defendants.

3. It is an admitted fact between the parties that after the close of the oral evidence of the plaintiff/respondent No.3 on 18.01.2023, the case was adjourned to 08.02.2023 for his documentary evidence and on 08.02.2023, plaintiff/respondent No.3 closed his documentary evidence and the case was adjourned to 29.03.2023 for defendant evidence, on which date the oral evidence of defendants/respondents No. 1 and 2 was closed after examining one DW and the case was adjourned to 22.05.2024 for documentary evidence on behalf of defendants No. 1 and 2 and defendant evidence on behalf of proforma defendants No.3 and 4 and defendant No.6 & 7.

4. Thereafter petitioner No.1/proforma defendant No.3-Omwati furnished affidavit in examination-in-chief on 22.05.2024. Similarly, petitioner No.2/proforma defendant No.4 furnished affidavit in examination-in-chief on the same date. The petitioners/proforma defendants No.3 and 4 moved an application for appointment of handwriting and fingerprint expert to verify/compare signatures of petitioners/proforma defendants No. 3 and 4 over alleged affidavit dated 20.06.2006 pleading therein that defendants No. 1 and 2 have submitted in their affidavits that proforma defendants No.3 and 4 had issued this affidavit dated 20.06.2006 for no objection if electricity connection is transferred in the name of defendant No.1.

5. Reply to application was also filed by contesting defendants No. 1 and 2/respondents No.1 and 2. Thereafter, on 10.07.2024, contesting defendants No. 1 and 2 /respondents No.1 and 2 filed an application for excluding affidavits filed by petitioners/proforma defendants No. 3 and 4 alleging therein that since they have



filed an written statement admitting the claim of the plaintiff they were under an obligation to give their evidence before evidence of contesting defendants No.1 and 2/respondents No. 1 and 3 but since they never came forward to exercise their right, therefore, they have no right to file their affidavits at this stage, just to fill up the lacuna in their case.

6. Reply to the said application was filed. Vide impugned order dated 21.08.2024, the said application was allowed by the learned Trial Court.

7. Learned counsel for the petitioners has, in the first instance, argued that the issue as to which of the defendants should begin leading evidence is not specifically dealt with in Order XVIII of the Code of Civil Procedure, 1908 (for short 'CPC'). It is submitted that a defendant supporting the case of the plaintiff is not debarred either expressly or impliedly from leading evidence, and that no party to the suit can be denied the right to tender evidence.

8. It is further argued by the learned counsel for the petitioners that the Court, being the master of the proceedings, is not to act as a passive agent but to guide the trial of the suit. Therefore, according to the counsel, it was the duty of the trial Court to invite the petitioners/consenting defendants to lead evidence first. Reliance has been placed upon *Jhumpa Bewa & Ors. v. Saha Dev Rout & Ors., AIR 1987 Orissa 209*, wherein the Orissa High Court held that defendants supporting the plaintiff's case should lead evidence prior to those opposing it, and that the Court should guide the parties in this regard.

9. I have considered the submissions made by learned counsel for the petitioners and gone through the record.

10. It is indeed settled that no party to a suit can be denied the right to tender evidence. The narrow question, however, is whether a consenting defendant



admitting the plaintiff's case, can lead evidence after the contesting defendants have concluded theirs.

11. Order XVIII CPC does not draw any express distinction between a contesting and a consenting defendant. However, judicial pronouncements have consistently held that where a defendant supports the plaintiff's case, such a party should lead evidence immediately after the plaintiff, so that the contesting defendants are afforded a fair opportunity to lead rebuttal evidence.

12. In *Kirti v. Anoop Singh (deceased) through LRs & Ors., 2023 (2) RCR (Civil) 591*, it was held that once a defendant admits the case of the plaintiff and supports her then, she is essentially claiming the same relief as is claimed by the plaintiff. Consequently, that defendant should have moved the Court to lead evidence before the contesting defendants were permitted to do so. If the petitioner is permitted to lead evidence at this stage, the contesting defendants would be deprived of the opportunity to counter evidence.

13. The ratio of above said judgment fully applies to the present facts. The judgment of the Hon'ble Orissa High Court in *Jhumpa Bewa (supra)* cannot be applied in view of the above-said decision in *Kirti's case (supra)* and in view of the contrary decision of Division Bench of this Court in *Harminster Pal & Anr. v. Pritam Das & Ors., 1990 (2) RCR (Rent) 518*, which authoritatively held that a consenting defendant cannot lead evidence after the contesting defendants have concluded theirs, though such a defendant may lead evidence after the close of the plaintiff's case and before the contesting defendants commence theirs. The decision of the larger Bench carries greater binding value.

14. It is next argued by learned counsel for the petitioners that the application leading to the impugned order was an afterthought, intended to defeat



their rights, as the petitioners had already filed affidavits on 22.05.2024 along with an application for appointment of a handwriting and fingerprint expert.

15. This contention is without merit. The record reveals that the application for appointment of an expert was filed on 22.05.2024, the reply thereto was filed on 10.07.2024, and on the same date, the application for exclusion of the affidavits of the proforma defendants was moved. The timing and sequence of events clearly show that the application cannot be termed an afterthought to defeat the petitioners' rights.

16. It is further contended that the plea concerning the affidavit dated 20.05.2006 allegedly issued by the petitioners was never raised in the pleadings and was introduced for the first time in the evidence of defendants No. 1 and 2, therefore, the consenting defendants No. 3 and 4 left with no other option but to lead the evidence after defendants No.1 and 2 by examining the handwriting expert in order to disprove the alleged affidavit. Similarly, the plaintiffs could not lead evidence on the alleged affidavit as this fact was introduced first time in the evidence of defendants No.1 and 2

17. This argument is also unfounded. Perusal of the written statement filed by defendants No. 1 and 2 reveals that in para 7, it was specifically alleged that the plaintiff, along with defendant No. 3, had consented in 2006 to transfer an agricultural electricity connection from the name of the plaintiff's grandfather to that of Kamla Devi. This averment directly relates to the disputed affidavit of the same year. The plaintiffs were, therefore, fully aware of the controversy and could have led evidence at the appropriate stage. They failed to do so, and are now attempting to bring such evidence through petitioners/consenting defendants after the contesting defendants have closed their evidence, which cannot be permitted.



18. Thus, the law is very much clear that a consenting defendant stands on substantially the same footing as the plaintiff regarding the order of evidence. Permitting such a defendant to lead evidence after contesting defendants have closed theirs would amount to depriving the latter of an opportunity to rebut and would cause serious prejudice. The sequence of evidence is designed to preserve procedural fairness, not to facilitate tactical advantage or cure evidentiary deficiencies.

CONCLUSION

19. In view of the foregoing discussion, I find no illegality or perversity in the impugned order of the learned trial Court. The application moved on behalf of defendant Nos. 1 and 2 for exclusion of the affidavits filed by petitioners/proforma defendant Nos. 3 and 4 was rightly allowed.

20. Accordingly, the present revision petition is dismissed.

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

August 11, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No