

IN THE COURT OF SH AKBAR SIDDIQUE,
DISTRICT JUDGE 04, NORTH DISTRICT
ROHINI COURTS : DELHI

CS DJ/250/2018

NIDHI GOYAL

.....PLAINTIFF

VERSUS

GUDDU CHAUDHARY & ORS

....DEFENDANTS

ORDER/07.09.2026

1. Vide the present order I shall dispose of the application U/o 18 Rule 17 read with section 151 CPC for reopening of the plaintiff evidence.
2. Pertinently vide order dt. 27.05.2025, the present application was allowed to be treated as an application under order 18 rule 3 CPC. Thus the present application is decided in the light of the provision Order 18 Rule 3 CPC.
3. It is submitted by the learned counsel for the applicant that defence evidence was closed and present matter was fixed for final arguments.
4. Pertinently, at the time of fixing of the matter, for final arguments, the plaintiff raised certain objection that she wanted to bring on record certain evidence in rebuttal. As per the application, six witnesses have been cited by the plaintiff to be examined for leading rebuttal evidence. It is the case of the applicant that during the examination of the defence witness certain new evidences are

brought on record by the defendant, which are necessary to be countered by the plaintiff.

5. It is further assiduously contended by the applicant that if the rebuttal evidence is not allowed by this court, then grave prejudice will be caused to the plaintiff and the present dispute will not be decided in an effective manner. On the other hand, if the present application is allowed, then it will not cause any prejudice to any party.
6. ***Per contra***, opposed by the learned counsel for the defendant on the ground that the plaintiff have already been given ample opportunity to lead evidence, and the plaintiff have already been examined. Thus present application is an attempt to fill in the lacuna created by the plaintiff herself. Therefore, the present application is sans merit and it shall be dismissed with heavy cost.
7. Heard considered.
8. Before advertng further, I deem it appropriate to refer to the provisions of law i.e. Order 18 Rule 3 CPC:

Order XVIII Rule of the Code provides for hearing of the suit and examination of witnesses. Rule 1 of Order XVIII provides for the right to begin with examination of witness and Rule 3 provides for the procedure to produce when there are several issues.

Order XVIII Rule 1 and 3 of CPC reads as follows:-

Order XVIII : Hearing of the suit and examination of witnesses. "Rule 1. Right to begin.- 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." Rule 2 – XXX "Rule 3. Evidence where several issues.—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

produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case." A reading of Order XVIII Rule 1 would go to show that the said Rule recognizes that ordinarily it is the plaintiff who has a right to begin by leading his evidence and the only exception would be where 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, that the plaintiff is not entitled to any part of the relief which he seeks. In such a case, the defendant has right to begin.

9. Pertinently, the Order 18 Rule 3 CPC stipulates that where there are several issues, the onus of proving the same is on the party who wishes to prove the issue by leading evidence. Further, the party beginning the case may either produce evidence on those issues or reserve it by way of necessary rebuttal to the evidence produced by other parties.
10. Pertinently, the present suit is filed by the plaintiff seeking following reliefs,
 - a) Pass a decree of declaration in favor of the plaintiff and against the defendants thereby declaring that the plaintiff is the lawful owner of suit property i.e. property bearing no.2-E, admeasuring 170 sq. yards, forming part of Village Bharola colony known as Prithviraj Road, Adarsh Nagar, Delhi as shown in the site plan annexed hereto
 - b) Pass a decree of possession in favor of the plaintiff & against the defendant no.1 & 2 dispossessing the defendant no.1, his

associate, agents, legal heirs & assigns from the suit property i.e. property bearing no.2-E, admeasuring 170 sq. yards, forming part of Village Bharola colony known as Prithviraj Road, Adarsh Nagar, Delhi as shown in the site plan annexed hereto.

c) Pass a decree of mesne profits @ Rs.10,000/- per month or at such rate which the Hon'ble Court deem fit and proper, with effect from 23.06.2016 along with pendent lite and future interest @ 24% per annum in favor of the plaintiff & against the defendant nos.1 & 2 for illegal occupation of suit property i.e. property bearing no.2-E, admeasuring 170 sq. yards, forming part of Village Bharola colony known as Prithviraj Road, Adarsh Nagar, Delhi as shown in the site plan annexed hereto.

d) Pass a decree of permanent injunction in favor of the plaintiff and against the defendant nos. 1 & 2 restraining them, their associates, agents etc. from transferring, selling alienating, mortgaging or creating any third party rights in respect of suit property i.e. property bearing no.2-E, admeasuring 170 sq. yards, forming part of Village Bharola colony known as Prithviraj Road, Adarsh Nagar, Delhi as shown in the site plan annexed hereto & causing any damage to the superstructure as shown in the site plan.

e) Award the cost of suit in favor of the plaintiff and against the defendants.

f) Pass any other order which this Hon'ble Court deems fit and proper in the present facts and circumstances of the case.

11. Further on 05.08.2019, after completion of the pleadings, following issues were framed for adjudication by this court:

1) Whether the plaintiff is entitled to a decree of declaration and possession in respect of suit property i.e property bearing no.2-E, admeasuring 170 square yards forming part of village Bharola

colony known as Prithiraj Road, Adarsh Nagar, Delhi, as prayed in prayer clause (a) & (b) in the plaint? OPP

II) Whether the plaintiff is entitled to mesne profits @ Rs.10,000/- per month along with pendent lite and future interest as prayed in prayer clause (c) of the plaint ? OPP

(III) Whether the plaintiff is entitled to permanent injunction against the defendants as prayed in prayer clause (d) of the plaint ? OPP

(IV) Whether the plaintiff is entitled to cost of the suit ? OPP

(V) Relief.

12. Perusal of the issues shows that initial onus to prove issues is on the plaintiff alone. In the present case, the plaintiff is seeking declaration, to be declared as a lawful owner of the suit property, further, the plaintiff is seeking possession of the suit property, thereafter, the plaintiff is also seeking mesne profit to the extent of Rs 10,000/- per month, from 23.06.2016 against defendant number 01 and defendant number 2 in illegal occupation of the suit property, and lastly the plaintiff is seeking decree of permanent injunction in his favour, and against defendant number 01 and defendant number 02 restraining them from creating any third party interest home of the suit property.
13. Where the party beginning chooses in any case to give evidence on all the issues to repel the case of other side, he will not be permitted to give any further evidence in reply to rebut the evidence subsequently adduced by his opponent on the issues as to which the burden of proof lay upon his opponent. Where there are several issues onus to prove which is upon the plaintiff and of some on the defendant and plaintiff lead evidence only on the issues, the onus to prove which is on him, then he can reserve his right to lead rebuttal evidence on the issues, the onus to prove

which is on the defendant. The scheme of Rule 2 and 3 is that the party beginning states his case and at the time he exercises the option and intimates to the court that he will either produce evidence on all the issues including those the burden of proving which lies on the opposite party or that he will reserve his evidence on the later issues. The option may be exercised at any time before either party began his evidence. A party who has not exercise the option under Rule 3 at the proper stage cannot be permitted to adduce rebuttal evidence after the other party close his case.

14. I am of the humble opinion that it is not the case of a normal partition suit, wherein, if the plaintiff claims that scheduled property is a joint family and defendant took the plea that the suit property was partitioned, then the onus to prove that the partition took place may lie on the party asserting partition. Whereas in the present case, the scenario is little bit different as adumbrated above the onus to prove the issues was on the plaintiff by leading cogent evidences, and it was paramount for the plaintiff to prove these said issues.
15. Thus Pertinently, the plaintiff herself appeared as witness / PW1 and lead evidence thereafter, the plaintiff of evidence was closed on 18.05.2023. Then the defendants lead evidence and brought on record original sale deed dated 14.05.2009, 16.06.2009, and 24.06.2009, original mutation, later dated 20.05.2013, and original tax received dated to 02.11.2015.
16. Thus, it was mandatory for the plaintiff to prove her case by leading present evidence in order to throw the onus on the defendant where a rebuttal evidence cannot be, allowed as plaintiff have already availed her right to lead evidence.

17. Accordingly, in view of the aforesaid deliberation, I am of the humble opinion that present application does not inspire confidence and it is sans merit.
18. Accordingly the present application is dismissed.
19. Put up for final arguments on **29.10.2026**

**Announced in open
Court on 07.09.2026**

**(Akbar Siddique)
DJ-04, North, Rohini Courts,
Delhi/07.09.2026**