

Case called out.
Both parties absent.
No representation from either side.

ORDERS PASSED ON MEMO FILED BY THE PLAINTIFF

Counsel for the plaintiff filed memo and prays to permit to lead rebuttal amounts on issue no.2.

2. Counsel for the defendant no.1,3 and 4 filed objections to the memo and it has been contended that the memo filed by the Plaintiff is wholly misconceived, procedurally irregular and

not maintainable in law. Seeking permission to adduce rebuttal evidence amounts to seeking a substantive procedural indulgence which cannot be invoked by way of a mere memo, but only by filing a proper Interlocutory Application supported by a sworn affidavit, clearly disclosing the factual and legal grounds necessitating such relief.

3. It is stated that in the present case, the Plaintiff has neither filed any Interlocutory Application nor disclosed any valid or legally sustainable reasons justifying the relief sought. The attempt to seek such permission by way of a mere memo, without complying with the prescribed procedure, is clearly contrary to the settled scheme of the Code of Civil Procedure.

4. It is stated that Issue No.2 is an issue on which the burden of proof squarely lies upon the Plaintiff. The Plaintiff has already led his evidence and the same stands concluded. Having failed to discharge the burden cast upon him, the Plaintiff cannot be permitted to reopen or improve his case under the guise of rebuttal evidence.

5. It is stated that permission to adduce rebuttal evidence is not a matter of right, but lies within the judicial discretion of the Court, to be exercised only when the opposite party has introduced new facts or evidence beyond the pleadings. Stated that in the present case, the Defendants have strictly confined their evidence to the pleadings, and no new case or fresh facts have been set up so as to warrant or justify rebuttal.

6. Stated that the memo filed by the Plaintiff is vague, bald and bereft of material particulars, inasmuch as the Plaintiff has failed to disclose which specific portion of the Defendants' evidence requires rebuttal, what new facts are alleged to have arisen, or how the proposed rebuttal evidence is either necessary or relevant for the adjudication of Issue No.2. In the absence of such essential disclosure, the memo is nothing but an empty and speculative request, liable to be rejected.

7. It is stated that permitting the Plaintiff to adduce rebuttal evidence at this stage would, in effect, amount to granting him a second opportunity to fill up lacunae and cure defects in his own evidence, which is impermissible in law and contrary to the settled principles governing a fair and orderly trial.

8. It is stated that the suit is pending since the year 2020, and the Plaintiff's attempt to seek such permission without adhering to the due procedure prescribed by law is clearly calculated to protract the proceedings and delay the disposal of the suit, thereby causing serious prejudice to the Defendants. Thus prays to reject the memo.

9. Perused the memo and objections as well the other material particulars available on record. Below mentioned points arisen for my consideration.

POINTS

1. Whether the plaintiff made out grounds to consider the memo and grant the relief as prayed for ?

2. What order?

10. Heard counsel for both parties. Perused the memo, objections and other relevant materiel particulars available on record,

Point No.1: In the Affirmative.

Point No.2: As per final order for the following:

REASONS

11. Point No.1: This memo has been filed by the counsel for the plaintiff and prays to permit the plaintiff to lead a rebuttal evidence on Issue No. 2. Counsel for the plaintiff argued that burden cast on the Defendants no. 1, 3 and 4 to prove Issue No. 2 as such Plaintiff be permitted to lead rebuttal evidence on Issue No. 2 after the evidence concluded by the defendant no. 1, 3 and 4. It has been argued that no prejudice is going to be caused to the defendant No.1, 3 and 4 if the permission is accorded to the plaintiff to lead the rebuttal evidence.

12. On the contrary, counsel for the defendants no. 1, 3 and 4 argued that seeking permission to adduce rebuttal evidence amounts to seeking a substantive procedure indulgence which cannot be invoked by way of a mere memo, but only by filing a proper interlocutory application supported by a sworn affidavit, by clearly disclosing the factual and legal roots necessitating such relief. It has been argued that the plaintiff has neither filed any interlocutory application nor disclosed any valid or legally sustainable reasons justifying the relief as sought for in the memo. It has been argued that without complying with the prescribed procedure as contemplated in the Code of Civil Procedure, the memo which filed by the plaintiff is not maintainable, as such, the same is liable to be rejected. It has been argued that evidence of the plaintiff has been completed and having failed to discharge the burden cast upon him, Plaintiff cannot be permitted to adduce the rebuttal evidence by reopen or to improve his case under the guise of rebuttal evidence. It has been argued that

permitting the plaintiff to adduce the rebuttal evidence at the present stage would in effect amount to granting him a second opportunity to fill up the lacuna and cure defects in his own evidence, which is not permissible in law and contrary to the settled principles governing a fair and orderly trial. It has been argued that in order to protect the proceedings of this case and to delay the disposal of the suit, the present memo has been filed by the plaintiff. Hence the said memo is liable to be rejected since it is not maintainable. Thus prays to dismiss the memo.

13. Heard counsel for plaintiff and defendant no. 1, 3 and 4. Perused the material particulars available on record including the memo and the objections. On perusal of the material particulars available on record, it clarifies that the suit had been filed by the plaintiff against the defendant seeking for the relief of partition. Defendant no. 1, 3 & 4 appeared and filed a written statement contesting the case on merits. Issues have been framed by this Court and plaintiff

has already led his evidence. After completion of the cross examination of PW1, counsel for the plaintiff filed memo and sought permission to lead rebuttal evidence on Issue No. 2.

14. It has been argued by the counsel for the plaintiff that at this stage they are going to conclude their evidence and after completion of the evidence of defendants on Issue No. 2, plaintiff may be permitted to adduce rebuttal evidence on the said issue as such permission is required, hence the memo has been filed. It has been argued by the counsel for the plaintiff that filing of interlocutory application is not at all required seeking permission to lead the rebuttal evidence since the defendants not yet commenced their side evidence.

15. In support of their arguments, counsel for the plaintiff relied on the petition of the Hon'ble Andhra Pradesh High Court reported in (2002)6 ALT 100, wherein it has been held by the Hon'ble High Court of Andhra Pradesh held that

‘Here it should be stated that when a plaintiff intends to reserve his right to adduce rebuttal evidence it is not necessary to file a petition for the said purpose. A memo informing the Court that in respect of the issues on which the burden of proof is on the defendant, plaintiff is reserving his right to adduce rebuttal evidence would suffice. Such memo must be filed before the defendant starts adducing his evidence. If plaintiff does not file such a Memo and wants to adduce rebuttal evidence after defendant beginning his evidence, he must file a petition seeking permission of the court to adduce further evidence or evidence in rebuttal’.

16. On perusal of the ratio laid down by the Hon'ble High Court of Andhra Pradesh in the above cited decision, it clarifies that if a memo is filed before commencing the

evidence by the defendant, then filing of application seeking permission to seek rebuttal evidence is not at all required and filing of memo is enough to intimate to the court that plaintiff is intending to lead rebuttal evidence with respect to the issue is concerned.

17. The ratio laid down by the Hon'ble High Court of Andhra Pradesh in the above cited decision nullifies that arguments addressed by the Counsel for the defendant No.1, 3 and 4 that interlocutory application is required to be filed by the plaintiff seeking permission to lead the rebuttal evidence.

18. In this case also, Issue No. 2 has been framed and burden cast on the defendant no. 1, 3 and 4 to prove the said issue. Defendant no. 1, 3 and 4 have not yet commenced their said evidence, at this stage, Counsel for the plaintiff filed the memo seeking permission to lead rebuttal evidence after conclusion of the evidence of defendant on Issue No. 2. Since the defendants not yet commenced their side evidence & burden cast on defendant no. 1, 3 and 4 to prove Issue No. 2 ,

this Court opines that it is essential to provide opportunity to the plaintiff to lead rebuttal evidence after completion of the evidence by defendant no. 1, 3 and 4 on Issue No. 2. If the permission is granted to the plaintiff to lead the rebuttal evidence after completion of evidence of defendant no. 1, 3 and 4, it is not going to cause any hardship or injustice is going to be caused to the defendant no. 1, 3 and 4. With all these discussions I proceed to answer Point No.1 in the affirmative.

19. **Point No.2:** As discussed above in point No.1, I proceed to pass the following.,

ORDER

Memo filed by the plaintiff is allowed.

Permission accorded to the plaintiff to lead rebuttal evidence after completion of evidence of defendant no. 1, 3 and 4 on Issue No.2.

Matter posted for defendant evidence.

Call on:04-03-2026.

1st Addl. Sr. Civil Judge &
JMFC.,Puttur, D.K.