



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

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CR-5951-2026 (O&M)

Date of decision: 03.09.2026

Manoj Kumar and others

...Petitioners

Versus

Anita Bagga and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. R.B. Gupta, Advocate,
for the petitioners.

VIKAS SURI, J.

1. This petition has been filed by defendant-petitioners under Article 227 of the Constitution of India, for setting aside impugned order dated 17.07.2026 (Annexure P-11), passed by learned Civil Judge (Junior Division), Faridabad, whereby application filed by petitioners (defendant Nos. 1 to 3) for setting aside order dated 28.07.2025 (Annexure P-6) has been dismissed, as well as for recalling order dated 28.07.2025 (Annexure P-6), whereby evidence of defendants has been closed by Court order, and permitting defendant Nos. 1 to 3 to lead their remaining defence evidence.

2. Learned counsel for the petitioners submits that plaintiff-respondent No. 1 has filed a suit for declaration with consequential relief of permanent and mandatory injunction, claiming to be the owner of suit property measuring 133.33 sq. yards, described as House No. 1303, Sector-7D, Faridabad, on the basis of Will dated 24.12.2020, bearing

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Document No. 319/3. The suit was instituted on 13.05.2021 and upon notice thereof, defendant Nos. 1 to 3 filed a counter-claim thereto, on 09.07.2021. The Trial Court framed issues qua the main suit as well as the counter-claim vide order dated 22.02.2023 (Annexure P-4) and the case was adjourned to 28.03.2023 for plaintiff's evidence.

2.1 Thereafter, plaintiff's evidence was eventually closed by her counsel with regard to issues in the main suit vide order dated 30.01.2024 (Annexure P-5), whereby learned counsel also reserved the right of plaintiff to adduce evidence on the issues in the counter-claim at a later stage, and the matter was deferred to 03.05.2024 for defendants' evidence. Despite several opportunities having been granted to defendant-petitioners since then, they failed to conclude their evidence and consequently, evidence of the defendants was closed by order of the Court on 28.07.2025 (Annexure P-6).

3. Aggrieved by the aforesaid, defendant-petitioners filed an application under Section 151 CPC, before the Trial Court, for setting aside order dated 28.07.2025 and seeking permission to produce witnesses for the purpose of defendants' evidence. The Trial Court dismissed the said application vide impugned order dated 17.07.2026 (Annexure P-11), noting that defendants' evidence was closed due to the absence of any defendant's witness on that day, and this fact was recorded in the order passed on 28.07.2025. It was reasoned that the said order could not be recalled on the basis of an unsubstantiated allegation made by the defendants that their presence could not be marked on that day, due to heavy rush in Court.



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4. Both the aforesaid orders dated 28.07.2026 (Annexure P-6) and 17.07.2026 (Annexure P-11) have been assailed by way of the present petition, at the hands of defendant-petitioners.

5. Learned counsel for the petitioners submits that petitioners had no malafide intention in not producing their witnesses on the day appointed by the Trial Court for this purpose. It is further submitted that the examination-in-chief of DW-1 Kanchan Bhatia (who is none other than defendant-petitioner No. 2) was recorded on 25.10.2024 and her cross-examination was deferred at the request of learned counsel for the plaintiff. Thereafter, cross-examination of DW-1 was finally completed only on 26.05.2025, and the case was then adjourned to 28.07.2025 for remaining evidence of the defendants. When no witness was produced on the adjourned date, learned Trial Court closed defendants' evidence vide order dated 28.07.2025. Thus, it is stated that defendant-petitioners were granted only one opportunity to produce the rest of their evidence.

5.1 Learned counsel for the petitioners also pleads that the other witnesses could not have been examined by the defendants before the complete examination of DW-1 (defendant) by virtue of the provision contained in Order 18 Rule 3A of the Code of Civil Procedure, 1908 (for short, 'CPC'). Learned counsel further submits that the petitioners are ready to produce the entire remaining evidence on behalf of the defendants and if permitted, the same shall be done on two consecutive hearings, at their own responsibility, including the date already fixed, i.e. 11.09.2026. Therefore, a prayer has been made for grant of two opportunities to produce the remaining evidence for the defendants.



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6. I have heard learned counsel for petitioners and perused the record with his able assistance.

7. In view of the order proposed to be passed, notice is not being issued to the respondents, as it would delay the proceedings besides entailing additional expense to plaintiff-respondent No. 1.

8. A perusal of the interlocutory orders passed by the trial Court in the present case, appended as Annexure P-5 to the present petition, would show that DW-1 (defendant-petitioner No. 2) was examined in-chief on 25.10.2024 and thereafter, the matter was adjourned on nine occasions before her cross-examination was finally completed. On several of these occasions, the cross-examination of the said witness was deferred at the request of learned counsel for plaintiff-respondent No. 1. Despite the aforesaid pendency of cross-examination, the Trial Court granted last opportunity for producing remaining evidence of the defendants, vide order dated 04.12.2024, which was reiterated in subsequent interlocutory orders, including order dated 26.05.2025, whereby cross-examination of DW-1 was eventually conducted and matter was deferred to 28.07.2025 for remaining evidence of defendants. It is noteworthy that on the very next date of hearing, defendants' evidence was closed by the Court vide impugned order dated 28.07.2025, as no defendant's witness was present.

9. At this stage, it would be apposite to refer to Rule 3A of Order 18 of CPC, which has been relied on by learned counsel for defendant-petitioners to substantiate their inability to produce other witnesses prior to the date when the aforesaid impugned order was passed.

The said provision reads as under:



“3A. Party to appear before other witnesses.—Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

10. A bare perusal of this provision would show that the defendants were required, in terms of the mandate of procedural law, to first examine DW-1, who has been impleaded in the suit by plaintiff-respondent as defendant No. 2, before any other witnesses could be produced and examined by them. The same has been cited by learned counsel to justify the delay in concluding defendants’ evidence.

11. Concededly, the petitioners availed several opportunities after the date of closing of plaintiff’s evidence, i.e. 30.01.2024, to conclude their evidence but failed to do so. They have now approached this Court after passing of the impugned orders, whereby their evidence was closed by order of the Court, and their application to set aside the same and grant an opportunity to produce the rest of the witnesses, has been dismissed.

12. It is well settled that every party must be afforded a fair opportunity to lead evidence in support of their pleadings. The Courts are always inclined to adjudicate upon the merits of the case after taking evidence, admissible in law. Therefore, keeping in view the peculiar facts and circumstances of the present case, the conduct of the defendant-petitioners is not such that it cannot be atoned by imposing costs, so as to adequately compensate plaintiff-respondent No. 1.



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13. In view of the aforesaid, I am of the considered opinion that ends of justice would be adequately met if two effective opportunities are granted to the petitioner-defendants to conclude their entire evidence, at their own responsibility. No prejudice would be caused to plaintiff-respondent No.1 in case the dispute between the parties is adjudicated after affording due opportunity to petitioner-defendants to contest the same. The same would also be in the interest of justice.

14. Accordingly, the present revision petition is allowed. The impugned orders dated 28.07.2025 (Annexure P-6) and 17.07.2026 (Annexure P-11) are set aside, subject to payment of costs of Rs.25,000/- to plaintiff-respondent No. 1; and on doing so, two opportunities are granted to the defendant-petitioners to conclude their entire evidence, on two successive hearings, i.e. the first being on the date already fixed before the Trial Court, which is stated to be 11.09.2026, and another date to be fixed by the Trial Court not earlier than one week thereafter. It is made clear that failing to pay costs in terms of this order or to avail these opportunities to lead evidence, the defendant-petitioners would not be entitled to any further opportunity for the said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

15. As the present revision petition is being disposed of in the absence of the plaintiff-respondent No.1, liberty is granted to her to seek recalling of this order, if valid grounds for the same are made out.



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16. The revision petition is disposed of in the aforesaid terms.

September 03, 2026
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No