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

CR No.1737 of 2013

Date of decision: May 12, 2015

Rajesh Kumar

.....Petitioner

Versus

Dr. Surinder Kumar Mittal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rajbir Singh, Advocate
for the petitioner.

Mr. V.K. Garg, Advocate
for respondent No.1.

None for proforma respondent Nos.2 to 5.

SABINA, J

Petitioner has filed this petition challenging the order dated 06.08.2012, whereby application moved by the petitioner for recalling DW5 Krishan Gopal Singla and DW6 Surinder Pal Mittal for cross-examination, was dismissed.

I have heard learned counsel for the parties and have gone through the record available on the file carefully.

Respondent No.5-Vinod Kumar has filed suit for declaration and permanent injunction. Petitioner has been arrayed as defendant No.5 in the suit. The plaintiff Vinod Kumar has challenged the sale-deed executed by their father Mohan Lal-defendant No.3 in favour of defendant No.2, who further executed sale-deed in faovur of defendant No.1.

Learned trial Court while dismissing the application filed by the petitioner for permission to cross-examine DW5 and DW6 has observed as under:

“3. Perusal of the case reveals that the pleadings of defendant No.5 are in absolute harmony with the pleadings of the plaintiffs. To rephrase, there are no rival contentions between the plaintiff on the one hand and defendant No.5 on the other hand. The real tug of the war is being essentially fought between plaintiff and defendants No.1 to 3 whereas defendant no.5 is merely a passive onlooker. Both DW5 as well as DW6 have been comprehensively cross examined by the plaintiff. Therefore to assert that prejudice will entail to defendant no.5 because of the non cross examination of DW5 and DW6 by counsel for defendant no.5 would be a misconception as their interests also stands effectively defended and represented by plaintiff himself.”

The reasons given by the trial Court while dismissing the application moved by the petitioner, are sound reasons. In fact, the interest of the petitioner and the plaintiff is the same. Plaintiff has challenged the sale-deed executed by his father. Plaintiff and the petitioner are real brothers. In these circumstances, the learned trial Court rightly held that there was no occasion to re-summon DW5 and DW6 to enable the petitioner to cross-examine the said witnesses.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 12, 2015
m.singh