

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

Civil Revision No.2241 of 2015 (O&M)

Date of decision: 4.5.2015

Ms. Nirmal Chainani

..... Petitioner

Versus

Lal Chand Gulab Rai Chainani and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjay Vij, Advocate, for the petitioner.

Mr. Bhupinder Ghai, Advocate, for the respondents.

RAJESH BINDAL, J

Challenge in the present petition is to two orders of even date i.e. dated 10.3.2015 passed by the learned court below, whereby the evidence of the petitioner has been closed by order of the court and further her application to examine the witnesses present in court, though not mentioned in the list of witnesses, was dismissed.

The parties to the dispute are brothers and sister. The suit for declaration with consequential relief of permanent injunction was filed by the petitioner on 23.7.2008, which is pending in the court below. The petitioner did not even marry.

Learned counsel for the petitioner submitted that after filing of the suit, proceedings remained pending on account of application filed by the defendants under Order 7 Rule 11 CPC. The issues were framed on 17.7.2013, after decision thereon. The petitioner is a senior citizen. She had been making all efforts to conclude her evidence, however, still on account of certain unavoidable circumstances, she could not conclude her evidence. The petitioner has already examined 11 witnesses. Even her statement has also been recorded. No doubt, number of opportunities have been granted but still on most of the occasions, the petitioner had been leading evidence. The reason assigned in the order passed by the learned court below that the case being more than 5 years old, no further adjournment is to be granted for leading evidence, does not fit in the circumstances of the case for the reason that the issues were framed only on 17.7.2013. With reference to the order

declining prayer regarding statements of her sisters and niece, the submission is that even if they had not been summoned, but being present in court, they should have been examined by the court considering the fact that the dispute is amongst the family members and they could throw light thereon for right solution. He further submitted that the petitioner had spent her entire earning to take care of her brothers, who are respondents and in buying properties in their names. Certain evidence in the form of account statements from the bank is also required for which, application was filed besides two other persons. He further submitted that in case reasonable opportunity is granted, the petitioner will conclude her entire evidence.

On the other hand, learned counsel for the respondents submitted that even in the order dated 12.2.2015 passed by the learned court below, it was made clear that the evidence of the petitioner shall be closed on the next date of hearing. In the absence of challenge to that order, the petitioner may not be entitled to any relief. He further submitted that regarding presence of the witnesses in court, who had not been mentioned in the list of witnesses already submitted, in the order dated 10.3.2015, the court has specifically noticed that no other witness was present. In fact, the petitioner filed application thereafter at 4:00 p.m. seeking to examine four witnesses, namely, Rani Sajnani, Prem Lata, Priya Advani and Moina. Regarding Rani Sajnani, prayer of the petitioner had already been rejected vide order dated 12.2.2015, hence, the same issue could not be agitated again. Regarding summoning of bank official, learned counsel for the respondents submitted that the petitioner had already summoned other bank official and in fact, the object is only to delay the proceedings. Official from the concerned bank was summoned. In the list of witnesses initially supplied, only seven witnesses were named. The petitioner has already examined 11 witnesses. It is never ending process. The suit was filed more than six years back.

Heard learned counsel for the parties and perused the paper book.

The suit has been filed by the sister against her brothers and nephew. It is claimed that she being eldest had taken care of younger brothers and brought them up. She did not even marry. Properties were purchased in their names. Challenge in the present petition is to the orders, whereby the evidence of the petitioner was closed by order of the court and

the application filed by the petitioner for examination of the witnesses present in court, though not named in the list of witnesses, was dismissed. No doubt, one of the reason assigned by the learned court below while closing the evidence of the petitioner by order is that the case is more than five years old. There is no doubt about it, but the fact remains that the issues were framed only on 17.7.2013. Prior to that, application filed by the defendants under Order 7 Rule 11 CPC remained pending. After the evidence of the petitioner started, on two dates of hearing, no witness on behalf of the petitioner was present and the case was to be adjourned. On one date of hearing, some application for permission to lead secondary evidence was filed, otherwise, on other dates of hearing, one or more witnesses were present on behalf of the petitioner and they were examined, cross-examined or cross-examination was deferred on the request of counsel for the defendants or on account of the witness not bringing the complete record. The plaintiff is now seeking to produce on record the details of bank accounts maintained in Syndicate Bank and Hongkong and Shanghai Banking Corporation. She further wants to examine one Krishan Kumar Yadav and Narender Saini, Advocate, District Courts Gurgaon. Further prayer is for permitting the petitioner to get the statements of Rani Sajani, Prem Lata, Priya Advani and Moina being sisters and niece of the petitioner, recorded in court.

Considering the fact that the petitioner had been making consistent efforts to lead her evidence on almost every date of hearing, in my opinion, closer of the evidence of the petitioner only on the ground that the case is five years old, is not justifiable, keeping in view the fact that the issues were framed only on 17.7.2013 as prior to that application under Order 7 Rule 11 CPC filed by the defendants remained pending. The record from the bank, which is sought to be produced is kind of official record, which cannot be tampered. Besides this, the prayer is for examination of Krishan Kumar Yadav and Narender Saini, Advocate, District Courts Gurgaon. The petitioner also seeks to get the statements of Rani Sajani, Prem Lata, Priya Advani and Moina recorded, who are her sisters and niece.

As far as statements of sisters and niece is concerned, in my opinion, the petitioner cannot be permitted to get the statement of Rani

Sajnani recorded, as prayer for the same had been declined by the court below vide order dated 12.2.2015 and the same attained finality. The prayer for examination of other three witnesses deserve to be allowed, considering the fact that it is a dispute between the family members and they could throw better light on the issues.

As regards other evidence is concerned, the details from the bank regarding account opening forms or the statement of bank account for certain period has been sought to be produced, which is kind of official record. Let the petitioner produce the same also. Two other witnesses are also sought to be examined, namely, Krishan Kumar Yadav and Narender Saini, Advocate, District Courts, Gurgaon. Once, the petitioner is being permitted to lead other witnesses, let these two witnesses be also produced. There is no bar as such in not permitting the witness to be examined, in case he/she has not been named in the list of witnesses, in case the court is satisfied. In the case in hand, considering the fact that it is a dispute between the family members, least they continue fighting only on technical reasons, let entire material come on record, so that the dispute could be adjudicated upon effectively and the parties may be satisfied even by the decision at the first stage.

In view of my aforesaid discussions, the orders dated 10.3.2015, closing the evidence of the petitioner and further declining the prayer to examine the witnesses present in court, are set aside. The petitioner be granted effective opportunity to conclude her evidence. The court assistance may be provided to summon the official witnesses from the Bank, whereas, it will be the responsibility of the petitioner to produce the private witnesses, namely her sisters and niece and Krishan Kumar Yadav and Narender Saini, Advocate, District Courts, Gurgaon.

The petition stands disposed of.

(RAJESH BINDAL)
JUDGE

4.5.2015

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