

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

CR No.2385 of 2014
Date of Decision: 30.01.2015

Jaspal Kaur Dhillon

. . . .Petitioner

Versus

Bittu @ Kulwinder Singh and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.A.S. Gill, Advocate,
for the petitioner.

Mr.M.S. Sachdev, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is aggrieved against the order dated 25.2.2014 by which an application filed by the defendants under Order 18 Rule 3A of the Code of Civil Procedure, 1908 [for short 'the CPC] has been allowed and the evidence of the petitioner recorded as PW3 has been ordered to be expunged.

The brief facts of the case are that the plaintiff/petitioner filed a suit for permanent injunction to restrain the defendants from interfering in her possession over the suit property. She had also executed a General Power of Attorney in favour of her husband on 5.12.2008. Issues were framed and the plaintiff examined two witnesses, namely, Vijay Kumar (General Power of Attorney) as PW1 and Surjit Singh as PW2. Thereafter, she tendered her affidavit in examination-in-chief as PW3. At that stage, the defendants moved

an application under Order 18 Rule 3A of the CPC alleging that the plaintiff was to appear herself before the other witnesses and even if she wanted to appear after them then she should have sought permission of the Court which can be granted after recording reasons. It is also urged that she has no right to appear as a witness since her attorney, who happened to be her husband, has already appeared on her behalf as PW1 and now her appearance is only to fill up the lacuna left in the cross-examination of PW1.

Learned counsel for the petitioner has argued that Order 18 Rule 3A of the CPC is not mandatory as held by this Court in the following judgments: -

1. ***The Amritsar Improvement Trust Vs. Ishri Devi***, 1979 PLR 354.
2. ***Mahabir Jain Kanya Pathshala Trust, Bhiwani Vs. Daya Krishan***, 2010(3) CCC 385.
3. ***Surjit Kumar and another Vs. Lehmbur Singh and others***, 2008(1) PLR 643.

On the other hand, learned counsel for the respondents has argued that since the plaintiff has already stated her case through her power of attorney, who had appeared as PW1, therefore, she cannot be allowed to be examined later on to fill up the lacuna which has been left in the cross-examination of PW1 and has relied upon a judgment of the Madras High Court rendered in the case ***“Chennimalai Vs. Alagulakshi”*** 2009(5) RCR (Civil) 270.

I have heard both the learned counsel for the parties and perused the record.

Insofar as Order 18 Rule 3A is concerned, it has been held to be directory by Full Bench of this Court in the case of ***The Amritsar Improvement Trust (Supra)***, therefore, the observation of the trial Court that the word used by the legislature as 'shall' in the said provision would make it mandatory is patently erroneous.

As regards the examination of the plaintiff as PW3 after examination of her husband-Vijay Kumar as PW1, as her power of attorney, the decision in the case of ***Chennimalai (Supra)*** is to the effect that the principal can be permitted to be examined as a witness after his power of attorney was cross-examined but such party can be permitted to be examined as witness by making necessary application. There is no doubt that the attorney of the plaintiff namely, Vijay Kumar PW1, has stated in his affidavit *"that the deponent is well conversant with the facts of the present case and can depose in the Court about the correctness of the facts stated in the plaint."* At the same time, it cannot be ignored that the facts which are within the personal knowledge of the plaintiff can only be stated by her when she is allowed to appear as her own witness.

In these facts and circumstances, the order of the learned Court below suffers from error of jurisdiction as it has been under the impression that the word used by the legislature as 'shall' in Order 18 Rule 3A of the CPC makes it mandatory. However, in the facts and circumstances where the GPA has already appeared and this Court has observed that the permission can be granted by the Court even later on, the examination-in-chief of the PW3 shall not be expunged from the Court record subject to filing of an application by the plaintiff seeking permission of the Court now, at this stage, giving reasons for not being examined at the first instance before the

examination of PW1 and PW2. The application shall be filed within 15 days from date of receipt of certified copy of this order and shall be decided by the trial Court by giving reasons.

Disposed of accordingly.

30.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE