

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

CR No.2764 of 2013 (O&M)
Date of Decision: 27.01.2015

Malkiat Kaur @ Kochi and others

. . . .Petitioners

Versus

Balwinder Singh and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.K.S. Sidhu, Advocate,
for the petitioner.

Mr.Sandeep Bansal, Advocate,
for respondent No.1.

RAKESH KUMAR JAIN, J. (ORAL)

The present revision petition is directed against the order dated 20.3.2013 by which the application filed by the defendant/Malkiat Kaur on 18.2.2013 for summoning various judicial records and examination of witness during the cross-examination of the plaintiffs' witnesses has been dismissed.

Shorn of unnecessary details, I would like to reproduce the relevant portion of the application filed by petitioner No.1, which reads thus: -

*“1. Incharge judicial record room, Phul,
alongwith file No.173 dated 9.6.2006,
decision dated 20.9.2007 titled
Balwinder Singh versus Malkit Kaur etc,
for permanent injunction, Basta village*

Rajgarh, Tehsil Phul, Distt. Bathinda, in the court of Civil Judge (Jr. Divn.) Phul and file civil suit No.874 dated 3.11.1993 decision dated 11.11.2004 in the Court of Sh. Rakesh Kumar, Addl. Civil Judge (Senior Division) Phul, titled Malkit Kaur Vs. Nachattar Singh etc., Basta Village Rajgarh and file titled Malkiat Kaur Versus Nachattar Singh, application under Section 340 Cr. P.C., decision dated 13.6.2006 in the Court of Sh. Balwinder Kumar Judicial Magistrate, Ist Class Phul, Basta Village Rajgarh.

2. *Incharge Judicial Record Room Hon'ble Punjab and Haryana High Court, Chandigarh, alongwith file regular second appeal No.3526 of 2005 decision dated 5.7.2011 titled Malkit Kaur etc. Vs. Nachattar Singh etc.*
3. *Sh. Vijay Kumar Advocate and Notary Bathinda alongwith register No.336, 3378, 338 dated 1.7.2006.*
4. *HRC Bathinda alongwith Register Vasika No.198 dated 20.5.1997 of Kaidarnath, Deed Writer, Court compound Phul and register of Major*

*Singh Deed Writer Court Ahata Phul,
dated 30.12.1997.”*

Learned counsel for the respondents has submitted that he has no objection insofar as the summoning of records of Civil Suit No. 173 dated 9.6.2006, Civil Suit No. 874 dated 3.11.1993 and RSA No.3526 of 2005 are concerned but he has strongly objected to the summoning of the file titled as Malkit Kaur etc. Vs. Nachattar Singh etc. by which an application under Section 340 of the Cr.P.C. was decided on 13.6.2006 and also summoning of Mr.Vijay Kumar, Advocate, and Notary as well as the Register Vasika No.198 dated 20.5.1997 of Kaidarnath, Deed Writer, Court compound Phul and register of Major Singh, Deed Writer, Court Ahata Phul, dated 30.12.1997.

It is submitted that the documents objected to by him are neither pleaded nor any statement has been made by his witnesses for which they are sought to be summoned for the purpose of their cross-examination.

Learned counsel for the petitioners, however, submits that Balwinder Singh, who happened to be the General Power of Attorney of the petitioners and has filed the present suit, has played a fraud upon them because they are illiterate rustic ladies, therefore, an application under Section 340 of the Cr.P.C. was filed which was decided on 13.6.2006 and even the advocate, who had been appearing on behalf of Balwidner Singh, had withdrawn his power of attorney. As regards Mr.Vijay Kumar, Advocate, is concerned, a specific preliminary objection No.4 was taken by them in the written statement which will be proved through him and as

far as summoning of Vasika register is concerned, it is submitted that no plausible answer has been given.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the learned trial Court has erred in dismissing the application of the petitioner only on the ground of delay without looking to the fact that there is a chequered history of this case and the matter can be resolved if the earlier litigation is also allowed to be summoned for the purpose of cross-examining the witnesses of the plaintiffs.

Accordingly, the present application is partly allowed. The items No.1 to 3 of the application are allowed whereas item No.4 is rejected.

27.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE