

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

CR No.3589 of 2015 (O&M)

Date of decision : 09.09.2015

Smt. Santosh and another

...Petitioners

Versus

Pardeep Dalal and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Shailendra Jain, Sr. Advocate with
Mr. Bhagender, Advocate for petitioners.

Mr. Rakesh Nehra, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the order dated 10.04.2015, whereby application filed by the respondents-plaintiffs for seeking the intervention of the Court for medical examination of defendant Nos.1 and 2, petitioners herein, has been allowed.

Mr. Shailendra Jain, learned Senior Counsel assisted by Mr. Bhagender, Advocate for petitioners submits that plaintiffs had in 2013 filed the suit for declaration, with consequential relief of permanent injunction, seeking setting aside of the sale deed dated 05.12.2012. He further submits that plaintiff in order to prove averments made in the suit, has to stand on their own legs and not in the manner as has been done. Application, moved under provision order 7 Rule 11 read with Section 151 CPC, has erroneously

been allowed by the trial Court, whereby petitioner-defendant Nos.1 and 2 have been directed to appear before CMO, Rohtak. He further submits that plaintiffs, cannot be permitted to indulge into roving enquiry and collect evidence, by moving such application, rather has to discharge onus, as per provision of Section 101 of Indian Evidence Act.

Mr. Rakesh Nehra, learned counsel appearing on behalf of respondent No.1 submits, that respondents-plaintiffs had categorically made averments in the plaint that sale deed aforementioned had been executed by the defendant Nos.1 and 2 by playing fraud and misrepresentation on them and as both the aforementioned defendants are of unsound mind. Plaintiff availed the forum to prove averments and rightly so, trial Court has exercised jurisdiction in allowing the application, and there is no illegality and perversity in the impugned findings. Even otherwise, in case petitioners are not of unsound mind, there should not be any apprehension, in the mind in appearing before CMO, Rohtak. He further submits that order does not amount to declaring the defendants No.1 and 2 of unsound mind. It is only preliminary enquiry, to be conducted, in order to form an opinion at later point of time.

I have heard learned counsel for parties and appraised the paper book.

This Court vide order dated 25.08.2015 directed the petitioners-defendant Nos.1 and 2 to be present in the Court. Both Santosh and Devender have appeared in the Court and answered to the queries/question raised by this Court as any ordinary and prudent man would reply. Their answers have not been unshaky or in-coherent. It is settled law that plaintiffs

in order to prove their case by leading direct and cogent evidence have to stand on their own legs. The manner and mode, adopted by the plaintiffs, in seeking indulgence of the trial Court for issuance of appropriate direction to defendants No.1 and 2 to appear before CMO, Rohtak for medical examination, in my view is not correct. I regret to differ from the findings rendered by the trial Court. The suit is at the initial stage i.e. at the stage of plaintiff's evidence. Plaintiffs in my view, cannot be permitted to prove the case by collecting evidence in the manner it has chosen.

In my view, no cause of action accrued in favour of plaintiffs, by moving such application, as plaintiff has yet to conclude evidence.

It is also matter of record that application for appointment of guardian of defendant Nos.1 and 2 at the behest of plaintiffs is still pending, therefore examination of defendants by CMO, Rohtak at this stage of the suit is premature.

Keeping in view of aforementioned observations, I find that impugned order, directing the defendant Nos.1 and 2 to appear before CMO, Rohtak for medical examination is not sustainable, much less, devoid of merits. Accordingly, same is set aside.

Revision petition is allowed.

09.09.2015

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**(AMIT RAWAL)
JUDGE**