

CR No.3335 of 2014 (O&M)

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

**CR No.3335 of 2014 (O&M)
Date of decision:10.02.2015**

Shamsher Singh

...Petitioner

Versus

Bharpur Singh @ Bhura and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. HPS Ghuman, Advocate,
for the petitioner.

Mr. S.S.Salar, Advocate,
for the respondents

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 14.03.2014, closing his evidence and order dated 21.04.2014, dismissing his application for additional evidence.

In brief, the parties to the suit are real brothers. Respondents no.1 and 2/plaintiffs and the defendant-petitioner both have set up their respective Will in their favour purported to have been executed by their father Teja Singh. After the evidence of the plaintiffs was closed, the defendant-petitioner started his evidence and on 14.03.2014, 5 DWs including the petitioner himself were present for cross-examination but only 4 witnesses of the petitioner were cross-examined and cross-examination of the petitioner himself had to be deferred because the Court time was over. The case was adjourned for his cross-examination but at the same time, it

was observed by the trial Court that in view of the previous order, the evidence of the defendant-petitioner, except for his own cross-examination, was closed. The petitioner then filed an application for leading additional evidence to examine Labh Singh, Ex.Panch and Dr. Inderjit Singh, Handwriting and Fingerprint Expert to prove his report which is already a part of the Court file but the said application was dismissed vide order dated 21.04.2014 on the ground that once his evidence has been closed by order of the Court, additional evidence cannot be allowed to be led circumventing the order of closure of the evidence. As a result thereof, the petitioner has challenged those orders in this revision petition.

Counsel for the petitioner has argued that in the order dated 01.03.2014, the Court had recorded that if the petitioner would fail to bring his entire evidence on the next date of hearing, then his evidence may be deemed to be closed but the fact remains that he had produced as many as 5 witnesses for cross-examination including himself on 14.03.2014 out of which four witnesses were cross-examined but due to paucity of time, his cross-examination could not be conducted and the case was adjourned to 25.03.2014 and the Court below, while taking a strict view, closed further evidence of the petitioner, while allowing him only to be cross-examined. It is submitted that the petitioner had already filed the application for depositing diet money for summoning of his witnesses on 04.01.2014 and if the witnesses had not appeared, the Court should have used coercive methods for their presence instead of closing his evidence.

Learned counsel for the respondents, however, has submitted

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that the learned trial Court closed the evidence of the petitioner in terms of the statement made by him on 01.03.2014 and has not committed any error in the exercise of its jurisdiction. It is further submitted that the petitioner could not have been allowed to lead additional evidence once his evidence was closed as the said evidence was already available with him at that time.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the petitioner deserves one more opportunity to lead his evidence because the petitioner has made all efforts to examine his witnesses inasmuch as 5 witnesses were present on 14.03.2014 for their cross-examination out of which 4 were cross-examined and the petitioner was not cross-examined because the Court time was over. The petitioner had earlier filed an application for summoning and examination of the witnesses and deposited their diet money on 14.03.2014. It is altogether different aspect that those witnesses could not come.

In view thereof, the impugned order dated 14.03.2014 is hereby set aside to the effect that the petitioner would get one more opportunity to examine his witnesses on the date to be given by the trial Court and since the evidence of the petitioner has been re-opened by granting him one more opportunity, the application filed by him for additional evidence has become meaningless.

The revision petition is disposed of in the aforesaid terms.

February 10, 2015
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(Rakesh Kumar Jain)
Judge