

CR No.436 of 2015
CR No.437 of 2015

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

(1) **CR No.436 of 2015**
Date of decision:19.01.2015

Ajit Singh ...Petitioner

Versus

Nitin Matharoo and others ...Respondents

(2) **CR No.437 of 2015**
Date of decision:19.01.2015

Ajit Singh ...Petitioner

Versus

Nitin Matharoo and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ramesh Sharma, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CR No.436 and 437 of 2015 as both are inter-connected. However, the facts are being extracted from CR No.436 of 2015.

In brief, the petitioner-defendant no.1 filed an application under Order 8 Rule 9 read with section 151 of the Code of Civil Procedure, 1908 for seeking leave to file written statement and to exclude the written statement already filed by the above defendant and also to give him

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permission to cross-examine DW-6, DW-7 and DW-16.

According to the petitioner, he did not engage Shri Kamal Kant Verma, Advocate and also did not file the written statement rather defendant no.5 Rajiv Kumar, who happened to be his son, got his signatures on some blank papers and the power of attorney fraudulently. He never engaged any advocate and did not give him instructions to file the written statement.

On the other hand, the respondents have alleged that the suit was filed in the year 2007; issues were framed on 16.09.2009 and not only the plaintiff but the defendants have also led their evidence inasmuch as 17 witnesses have already been examined by the defendants, therefore, at this stage, the application filed by the petitioner should not be allowed.

The trial Court has observed that the plaintiffs have filed the suit for permanent injunction in which they have alleged that the suit property is ancestral and defendant no.1 has no right to execute the sale deed dated 28.02.2005 in favour of defendant no.2. They prayed for injunction to restrain the defendants from further alienating the suit property. The written statement was filed by all the defendants and the suit was contested and now by filing the separate written statement, the petitioner wanted to resile from his case already set up by him in the earlier written statement and thus dismissed the application.

Insofar as his application for seeking permission to cross-examine DW6, DW7 and DW16 is concerned, it was held that he is seeking the relief which is beyond his pleadings and the said witnesses have supported the case of petitioner-defendant no.1, therefore, there is no clash

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of interest for which he wanted to cross-examine them.

Counsel for the petitioner has argued that the petitioner has neither met with the advocate who has appeared on his behalf nor he has signed the power of attorney, therefore, he should have been allowed to file the separate written statement.

After hearing learned counsel for the petitioner and examining the available record, I am of the considered opinion that the request of the petitioner cannot be accepted because it cannot be believed that he had not signed the power of attorney and the written statement and has filed the application even when 17 witnesses of the defendants had already been examined. Had it been so, he would have immediately reacted and filed the application rather should have filed a criminal complaint against the advocate who is appearing on his behalf and defendant no.5 who has alleged to have taken his signatures on some blank papers and has converted them into the written statement but no such action was taken by the petitioner, therefore, it cannot be believed that he has been cheated by the advocate appearing on his behalf and defendant no.5.

In view of the above, the application filed by the petitioner appears to be an afterthought. Resultantly, the present revision petitions are hereby dismissed being denuded of any merit.

January 19, 2015
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(Rakesh Kumar Jain)
Judge