

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

CR No.4840 of 2015.

Date of Decision: 18.08.2015.

Krishandeep Kaur @ Gurdeep KaurPetitioner.

VERSUS

Ajaib Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vikram Jeet Singh, Advocate for the petitioner.

Mr. Surjit Singh Swaich, Advocate for respondent No.2.

SNEH PRASHAR, J.

By way of this civil revision petition filed under Article 227 of Constitution of India the petitioner assailed the order dated 26.08.2014 passed by learned Civil Judge (Senior Division), Mohali, by virtue of which her evidence in civil suit for declaration with consequential relief of permanent injunction, filed by her, was closed. The petitioner also impugned the order dated 02.07.2015 vide which her application filed under Section 151 of the Code of Civil Procedure (for short, "C.P.C.") for setting aside the order dated 26.08.2014 was dismissed.

The facts that emerge from the submissions of the petitioner are that she through her maternal grandfather had filed a civil suit for declaration of her share in the property shown with letters ABCDEFGH in the site plan annexed with the plaint, situated within the residential limits of village Kambala, Tehsil and District Mohali. She also sought separate possession by way of partition of the property which was joint with the defendants who are none other but her paternal uncles. The defendants appeared and contested the suit. Based on the rival contentions of the parties, issues were settled and the case was adjourned for evidence of the petitioner. She availed numerous opportunities but failed to produce any evidence. Ultimately, her evidence was closed by learned trial Court vide order dated 26.08.2014 and the case was adjourned for defendants' evidence. Subsequently, she filed an application invoking the provisions of Section 151 C.P.C. and prayed for one more opportunity to lead her evidence but her application was dismissed vide order dated 02.07.2015.

The submissions made by Mr. Vikram Jeet Singh, learned counsel representing the petitioner and Mr. Surjit Singh Swaich, learned counsel representing respondent No.2 have been heard.

Learned counsel for the petitioner submitted that the father of the petitioner had expired and she was being brought up by her maternal grandfather (Nana) through whom she filed the present suit claiming her share in the joint property held by her grandfather and other members of his family. She is a minor girl and her maternal grandfather is about 75 years old. They have a very meager source to contest the litigation. An

application for interim injunction filed by her before learned trial Court was dismissed, against which she preferred an appeal which has since been allowed by learned Appellate Court. Because she was pursuing the appeal filed by her, she inadvertently could not produce required evidence before learned trial Court.

Learned counsel urged that in case the plaintiff is allowed even one opportunity to adduce her evidence she will produce her entire oral and documentary evidence on the date fixed.

Resisting the prayer of the petitioner, learned counsel for respondent No.2 pointed out that as many as six effective opportunities were availed by the petitioner for producing her evidence. Vide order dated 08.07.2014 the petitioner was burdened with costs of Rs.1500/- and was allowed one last opportunity to adduce her evidence. On the next date of hearing, neither the costs were paid nor any witness was present and accordingly learned trial Court closed her evidence by order. Relying on 2015(2) PLR 421 in Rajesh Kumar vs. Amit Kumar, learned counsel asserted that when the costs imposed on the plaintiff-petitioner had not been deposited, there was no other option left with the trial Court but to close the evidence of the petitioner by order. Otherwise also, the petitioner had availed adequate opportunities for producing her evidence and when no evidence could be led by her, the order of learned trial Court closing her evidence was very much justified and there is no reason to reopen the trial especially when the defendants have also closed their evidence considering the fact that no evidence could be led by the petitioner.

Indeed, the certified copies of the orders of learned trial Court produced by learned counsel for the petitioner, support the contention of learned counsel for the respondent that as many as six effective opportunities were availed by the petitioner for producing evidence after the issues were settled on 05.07.2013 and yet neither any witness was examined nor any document was tendered by her in evidence. However, it is also evident from the orders that during the period 18.09.2014 to 25.05.2015 the file was not available in the trial Court as it had been requisitioned by learned first appellate Appellate Court for deciding the appeal preferred by the petitioner. The other facts which need consideration are that the petitioner has lost her father and is a minor girl being brought up by her maternal grandparents and is struggling hard to seek declaration of her share in the property which is joint with her paternal grandfather and uncles. Learned counsel for the petitioner submitted that the costs of Rs.1500/- imposed on the petitioner vide order dated 08.07.2014 has since been deposited by her.

Considering the above facts and circumstances and in the interest of justice, one more opportunity is given to the petitioner for producing her evidence subject to payment of Rs.2000/- as costs. The costs imposed shall be deposited with Legal Aid Authority at S.A.S. Nagar, Mohali and the receipt will be placed on record. It is submitted by learned counsel for the parties that the date fixed before learned trial Court is 21.09.2015. Both the parties shall appear before the trial Court on the date fixed and the trial Court will fix a date for evidence of the petitioner. On the

said date, the petitioner will produce her entire ocular and documentary evidence. In the event of any unforeseen eventuality, learned trial Court shall be at liberty to adjourn the case to another date in order to provide an effective opportunity for leading evidence to the petitioner.

Accordingly, the instant revision petition is allowed. The order dated 26.08.2014 passed by learned trial Court closing the evidence of the petitioner as well as order dated 02.07.2015 vide which the application of the petitioner for one more opportunity was dismissed, are set aside.

(SNEH PRASHAR)
JUDGE

18.08.2015.

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