

CR-5505-2015

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

CR-5505-2015

Date of decision: 26.8.2015

Mehmood Hassan

...Petitioner

Versus

Mehboob Hassan and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Rajesh Lamba, Advocate for the petitioner

SNEH PRASHAR, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 10.8.2015, (Annexure P-7) passed by learned Civil Judge (Senior Division), Mewat vide which, the evidence of the petitioner -defendant was closed by court order.

The facts as averred in the petition are that respondent No.1- plaintiff had filed a suit for declaration and permanent injunction for declaring the Will dated 21.5.1998 and gift deed bearing No.29.9.2011 executed by Quari Mohammad Suleman alongwith subsequent transaction of transfer and mutation to be illegal.

The submissions made by Mr.Rajesh Lamba, Counsel

for the petitioner have been heard.

Learned counsel for the petitioner referred to the zimni orders appended with the petition and submitted that the petitioner was present on each and every date of hearing, but somehow his statement could not be recorded as the case had to be adjourned on one pretext or the other. On 10.8.2015, when the case was fixed for his evidence, the petitioner moved an application for grant of adjournment as his close acquaintance expired and for that reason he was unable to attend the Court. Submitting that closure of his evidence without his stepping into the witness box will cause irreparable loss to him, learned counsel prayed that just one more opportunity be granted to the petitioner and on that date he will conclude his entire evidence.

Perusal of the zimni orders reveals that the petitioner was present for his statement on 13.4.2015 but his statement was not recorded stating that court time was over. On the next date i.e. 4.5.2015 again it appears that he was present but his statement was not recorded for the similar reason that court time was over as in the order it is reflected that other witnesses were present. It was on 10.8.2015 that due to sudden demise of some closely known, he moved an application for adjournment, however, the trial Court declined his request and closed the evidence by Court order.

Considering the above facts in my considered opinion, the petitioner is entitled to grant one more opportunity. His non-examination during evidence will cause prejudice to the case of the defendants. More so, with his statement the trial Court will be in a position to better appreciate the issue involved and that will help in rendering substantial justice to the parties.

Accordingly, the present petition is allowed. The impugned order dated 10.8.2015 is set aside and the learned trial Court is directed to grant one more effective opportunity to the petitioner-defendant to produce his entire evidence at his own risk and responsibility on the date to be fixed by learned trial Court, subject to deposit of Rs.2000/-, as costs with the District legal Services Authority, Mewat.

However, it is made clear that if the petitioner-defendant fails to produce his entire evidence on the date so fixed, no further opportunity shall be granted to him.

26.8.2015
gsv

(SNEH PRASHAR)
JUDGE