

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

CR-6726-2015

Date of decision: 9.10.2015

Kulwinder Singh

...Petitioner

Versus

Balwinder Singh and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Harkesh Manuja, Advocate for the petitioner

SNEH PRASHAR, J.

The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 8.9.2015 passed by learned Civil Judge (Junior Division), Jagraon vide which, the evidence of the petitioner was closed by order.

Plaintiff-respondent No.1 filed a suit for declaration claiming himself to be owner in joint possession of the suit property measuring 83 Kanals 17 ½ Marlas situated at Village Purain No.12, Tehsil Jagraon as per jamabandi for the year 2003-04. The petitioner-defendant filed written statement alleging that on the basis of the power of attorney dated 26.2.1997, defendant No.1/respondent No.2 executed a sale deed in his favour on payment of sale consideration.

The submissions made by learned counsel for the petitioner have been heard.

Learned counsel for the petitioner submitted that due to certain unavoidable circumstances and ill health, the petitioner could not appear for his cross-examination on the date fixed and ultimately his evidence was closed by learned trial Court vide impugned order dated 8.9.2015. He further submitted that if he is not allowed to be cross-examined by the opposite party, his examination in chief tendered by way of affidavit will not be considered, which will cause irreparable loss to him.

Perusal of the file shows that the issues were framed on 19.5.2010. The plaintiff-respondent No.1 concluded his evidence on 17.7.2012. The defendant-respondent No.2 produced three witnesses and their cross-examination was concluded in May, 2014.

On 7.8.2014, the petitioner was present and his examination-in-chief in the shape of his affidavit was filed and his remaining statement was deferred for want of original sale deed dated 30.1.2008. Later, he filed an application under Section 65 of the Indian Evidence Act to lead secondary evidence regarding the sale deed, which was declined by learned trial Court on 15.7.2015 and the case was adjourned for recording the evidence of the petitioner for 22.7.2015.

The petitioner is stated to be sixty years of age. His affidavit consisting of his examination-in-chief is already on the record and his remaining statement stands deferred. Being defendant, his deposition will obviously be an important piece of evidence. In view of said facts and circumstances and in the interest of justice and also without going into the merits of the case, in my considered opinion, it shall be expedient and in the interest of justice that one opportunity is given to the petitioner-defendant No.2 to appear for his remaining statement. Accordingly, the present revision petition is allowed. The order dated 8.9.2015 is set aside subject to deposit of Rs.5000/- by the petitioner as cost with the District legal Services Authority, Ludhiana.

However, it is made clear that if the petitioner -defendant No.2 fails to appear on the date so fixed by learned trial Court for his statement, no further opportunity shall be granted to him.

9.10.2015
gsv

(SNEH PRASHAR)
JUDGE