

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6498 of 2014 [O&M]
Date of Decision : May 19th, 2015

Pitamber Singh and another Petitioners

Versus

Rupesh Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Deepak Sharma, Advocate,
for the petitioners.

Mr. Karanbir Singh, Advocate
for respondent No.6.

Dr. BHARAT BHUSHAN PARSOON, J.

Order dated 12.09.2014 [Annexure P/5], vide which earlier to defendants No. 1 to 6, the plaintiffs have been ordered to cross-examine witnesses of defendant No.3, forms genesis of this revision petition.

2. It is claimed that since the Will propounded by the plaintiffs is under attack from the defendants, witnesses of defendant No. 3 are to be cross-examined by defendants No. 1 and 6 earlier to the cross-examination to be effected on such witnesses by the plaintiffs, so that right of the plaintiffs against the other defendants may not be jeopardized.

3. Learned counsel for the plaintiffs-petitioners herein has sought support from a decision of this Court in **Mohinder Singh Gill Vs. Jagdeep Singh and others 2013[1] R.C.R. 569** urging that cross-examination of witnesses of a defendant is to be done first for and on behalf of other defendants and in last of all by the plaintiffs when such co-defendants are having a claim rival to the plaintiffs.

4. Counsel for the contesting respondent [No.6] has urged that since defendant No. 3 is a proforma one and is siding with the plaintiffs, petitioners herein, cross-examination of witnesses of defendant No. 3 has

rightly been ordered to be effected earlier in point of time than cross-examination by defendants No. 1 and 6.

5. During the course of hearing, perusal of the paper book has revealed that in her written statement [Annexure P/3] defendant No. 3 has questioned validity and legality of the Will propounded by the plaintiffs. It thus, cannot be said that defendant No. 3 is falling in line with the cause and claim set-up by the plaintiffs.

6. In view of the totality of facts and circumstances, since the impugned order is based on a wrong premise that defendant No. 3 has admitted the claim of the plaintiffs and hence, her witnesses are to be cross-examined first of all by the plaintiffs and in the last by the other defendants, is against the record. In these circumstances, reference to Order X Rule 2 of the Code of Civil Procedure, 1908 is also necessary. A plaintiff, by nature of scheme of placement of the parties is always on the opposite side of the defendants.

7. Irrespective of nature of rival claim of the defendants qua the plaintiffs, cross-examination of the witnesses of the defendants is to be done last of all by the plaintiffs, when all other co-defendants have cross-examined the witnesses of one or more of the defendants.

8. Thus, fixing the plaintiffs to cross-examine the witnesses of defendant No. 3 first in point of time than cross-examination by defendants No. 1 and 6, is clearly wrong on facts as also in law. Sequelly, allowing the revision petition, the impugned order is set-aside. Witnesses of defendant No. 3 would be cross-examined first by defendants No. 1 and 6 and by other defendants, if they so desire, and such witnesses would last of all be cross-examined by the plaintiffs.

9. Parties to appear before the Court below on 06.07.2015.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

May 19th, 2015