

CR NO. 7147 OF 2015

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

**CR NO.7147 OF 2015
DATE OF DECISION: 21.10.2015**

Pritam Singh**Petitioner**
Vs

Balbir Singh and Others**Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Giri, Advocate
for the petitioner.

RITU BAHRI J. (Oral)

The petitioner has come up in revision against impugned order dated 17.09.2015 (*Annexure P-7*) whereby an application filed by respondent-defendant No. 1 for recalling Balwinder Singh (DW-2) for re-examination, has been allowed.

The dispute in the present case is with regard to the transfer deed dated 10.12.2009 which has been challenged by plaintiff/petitioner by way of a civil suit (*Annexure P-1*). In that suit, petitioner has also challenged mutation qua the suit land which has been entered and sanctioned on the basis of above said transfer deed, being forged and fabricated.

Vide impugned order, the application for retaining the file of the Revenue Court has been declined, however, the second application has been allowed whereby Balwinder Singh (DW-2) is ordered to be re-examined by the defendant. After tendering his affidavit in Exmination-in-Chief, the said witness was produced for his cross examination after a period of long time on 31.07.2015

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wherein he had stated that the suit land was in possession of Pritam Singh-plaintiff (petitioner herein) and Balbir Singh-defendant No. 1 never came in possession thereof. After his cross examination, the present application (*Annexure P-5*) was made under Section 151 Civil Procedure Code (C.P.C.) for recalling this witness for re-examination.

Learned counsel for the petitioner relies upon the judgement passed by the Hon'ble Supreme Court in "**K.K. Velusamy Vs. N. Palanisamy**", **2011 AIR SC (Civil) 1000**, to contend that the Court has power under Section 151 of Civil Procedure Code to recall a witness and re-open the case. However, Section 151 of Civil Procedure Code cannot be used routinely, merely for the asking of it. If the application is found to be bona fide and where there is additional evidence, oral or documentary, will assist the Court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence.

Counsel for the petitioner further argued that once Balwinder Singh (DW-2) admitted in his cross-examination that the plaintiff was in possession of the disputed land, he cannot be called for re-examination to change his version. It was further argued that the cross examination of Balwinder Singh (DW-2) was completed on 21.07.2015 and the application (*Annexure P-5*) was made on 06.08.2015.

In para 16 of the aforesaid judgement of the Hon'ble Supreme Court, it is further observed that the application for recalling should be dismissed with heavy costs, if it is found to be mischievous, or frivolous, or to cover up negligence or lacunae. If the application is allowed and the evidence is permitted and ultimately the Court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence.

In the facts of the present case, on recalling of Balwinder Singh (DW-2) for his re-examination, in case, defendant-respondent No. 1 will not be able to clarify above said stand and the Court finds that an evidence was not genuine or relevant, exemplary cost can be imposed upon the defendant at the time of final decision of the suit. At this stage no prejudice is going to be caused to the plaintiff/petitioner.

After going through the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in ***K.K. Velusamy's case (supra)***, no ground is made out to interfere in the impugned order, hence, the present civil revision is dismissed.

(RITU BAHRI)
JUDGE

21.10.2015

Suresh Kumar