

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**CR No. 7211 of 2015**

Date of decision : December 01, 2015

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Murari Lal and others

.....Petitioners

Versus

Suresh Kumar and others

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. Amit Arora, Advocate for the petitioners.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

The petitioners have filed this revision petition against the order dated 30.9.2015 (Annexure P-6) passed by the Civil Judge (Jr. Divn.) Hisar vide which the application filed by the petitioners-plaintiffs for recalling DW-9 Suresh Kumar for further cross-examination was dismissed.

The petitioners-plaintiffs had filed the suit for declaration to the effect that the petitioners no. 1 & 2/plaintiffs no. 1 & 2 are owners in possession of 1/8<sup>th</sup> share each while the petitioners no. 3 to 5/plaintiffs no. 3 to 5 are owners in possession of 1/24<sup>th</sup> share each of shop no. 198 situated in New Anaj Mandi, Hisar with a consequential relief of a decree for separate possession by metes

and bounds in respect of this shop and that the execution and registration of conveyance deed dated 24.6.2003 in the name of Suresh Kumar, defendant/respondent no.1 herein as Proprietor of M/s Manohar Lal Mukand Lal by Market Committee Hissar is the result of fraud, misrepresentation and criminal conspiracy.

On notice, the defendant filed his written statement, mentioning therein that by virtue of a Will dated 1.11.2002, his father had given this shop to him. In the above background, the defendant no. 1 Suresh Kumar was cross-examined by the counsel for the plaintiffs at first instance on 3.3.2015 and thereafter he was again cross-examined at length on 10.3.2015. Thereafter the evidence of the defendants was closed. After closure of the evidence, the present application for recalling DW-9 Suresh Kumar was made to cross-examine him with respect to the alleged Will dated 1.11.2002 which was dismissed by the trial Court by holding that once a witness has been cross-examined, he cannot be recalled for further examination on the ground that he was not cross-examined effectively by placing reliance upon a judgment of this Court in **Joginder Singh vs. Devinder Kumar 1991(1)CCC-202.**

I have heard learned counsel for the parties and perused the case file. The dispute in the present case was between two real brothers. The fact of Will was in the knowledge of the petitioners-plaintiffs after the written statement was filed by defendant-respondent no.1 Suresh Kumar in the year 2009. The petitioners-plaintiffs throughout the suit were aware about the contents of the

Will even when defendant DW-9 was being examined and cross-examined on 3.3.2015 and 10.3.2015. On a query put by the Court, counsel for the petitioners has stated that the respondents-defendants have led no evidence to prove the execution of Will dated 1.11.2002 since the respondent Suresh Kumar is the beneficiary of the Will and the only ground for recalling him by the petitioners-plaintiffs is that inadvertently he could not be cross-examined effectively on the point of Will.

In the absence of any evidence, led by the respondents-defendants, no case for cross-examination of DW-9 Suresh Kumar is made out. In view of all that has been discussed about and the facts and circumstances of this case, no interference of this Court is called for in the impugned order. Hence the present revision petition is dismissed.

December 01, 2015  
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( **RITU BAHRI** )  
**JUDGE**