

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.713 of 2014.
Decided on:-February 06, 2015.

Om Parkash Sharma and othersPetitioners.

Versus

Avinashi Lal Sharma and othersRespondents.

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

Argued by:- Mr. Sarju Puri, Advocate
for the petitioners.

Mr. M.S. Rakkar, Senior Advocate with
Mr. Vikram Bali, Advocate
for respondent No.7.

Dr. Bharat Bhushan Parsoon, J.

A suit for declaration that the plaintiffs are owners in possession of House No.3143, Sector 21-D, Chandigarh on the basis of registered Will dated 28.4.1980 is pending adjudication since 9.10.1998 and despite twenty five opportunities having been granted to the plaintiffs to conclude their evidence, their evidence had yet not been concluded. In short, the case is more than 10 years old. In this revision petition, two orders are under challenge.

2. In this revision petition, two orders are under challenge. One is of 21.1.2014 (Annexure P-15) vide which application of the plaintiffs, petitioners herein, for recording the cross-examination of petitioner-plaintiff

Om Parkash (PW5) through video conferencing has been declined and the other order is of 22.1.2014 (Annexure P-16) whereby evidence of the plaintiffs, petitioners herein, has been closed by the lower court.

3. It is claimed that Om Parkash (PW5) who had come for his examination-in-chief but his cross-examination could not be effected on the same day and was postponed is more than 80 years old and having undergone by-pass surgery is not in a position to come for cross-examination and thus, is required to be cross-examined through video conferencing. It is urged that he is an important witness being the plaintiff and thus, without his cross-examination, his statement cannot be read into evidence.

4. Counsel for the respondents-defendants has urged that when Om Parkash could come for his examination-in-chief, why he cannot come for his cross-examination and it is claimed that the application by examination through video conferencing lacks bonafides.

5. Hearing has been provided to the counsel for the parties.

6. Perusal of the paper book reveals that examination-in-chief by way of affidavit of Om Parkash (PW5) was effected on 2.12.2013. There is no reason why the defendants should not have cross-examined him on the same day. Deferring of cross-examination of Om Parkash for 4.12.2013 was not to serve any purpose. It was a ploy by the defendants to delay the matter. On 4.12.2013 when cross-examination of Om Parkash PW was to be effected, to avoid effecting of cross-examination, an application was moved by the defendants and they did not cross-examine the witness. Even during pendency of such application, there was no bar in cross-examining the witness which should have been done. Having fallen prey to the delaying tactics of the defendants, Om Parkash plaintiff left India for Canada where he is permanently residing. It is a conceded fact that he is more than 80 years old and in addition to being old, is also ailing. In reply to application filed

under Section 151 CPC for cross-examination of Om Parkash through video conferencing, the contesting defendants though did not favour cross-examination by video conferencing but had offered that instead of video conferencing, he can be examined through Local Commissioner and the court may issue the local commission for the same. Such averments in reply of the defendants, to the application of the plaintiffs for cross-examination for video-conferencing of Om Parkash (PW5), are important and for ready reference are reproduced as below:

“The application is not maintainable, there is a specific provision in the CPC that in such cases, where the witness is not residing within India, then he can be examined through Commission and the court can issue the Commission for the same.”

7. It is worth notice that when the matter had come before this Court in yet another civil revision petition No.243 of 2014 decided on 15.1.2014, a coordinate Bench of this Court had given liberty to the petitioners to move an application for appointment of Local Commissioner for recording of statement of plaintiff Om Parkash. Notwithstanding such liberty having been granted, the plaintiffs ignoring order dated 15.1.2014 of this Court had filed an application for recording of cross-examination of the plaintiff through video conferencing. Such application was moved on 20.1.2014.

8. Since cross-examination by appointment of Local Commissioner is not opposed even by the defendants as has been mentioned earlier, order of 22.1.2014 whereby evidence of the plaintiff had been closed, is set aside and the plaintiff may, if so advised, in terms of orders dated 15.1.2014 of this Court, may move an application before the court below for cross-examination of Om Parkash PW by appointment of Local Commissioner so that the old and ailing person is not required to move to India to his inconvenience from his house in Canada. The defendants by not

cross-examining him twice earlier when he continuous present in the Court in India, has already done sufficient harm to him. It is strange that the trial court gave so wide a rope to the defendants that could get the cross-examination twice when Om Parkash (PW5) continued to be present all through in the Court.

9. Since the defendants had themselves suggested this mode of cross-examining by the local commission in their reply of 20.1.2014 to the application of the plaintiff for cross-examination through video conferencing, if such an application for cross-examination of Om Parkash (PW5) through local commission is filed by the plaintiffs before the lower court within seven days from the date of receipt of certified copy of this order, the same would be decided within next seven days in accordance with law.

10. With these observations, this revision petition is disposed of.

11. The suit is pending since 9.10.1998. The same would be decided within three months even by conducting day to day proceedings, if found necessary. The court is not to show any laxity.

February 06, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes