

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

Civil Revision No.8522 of 2015 (O&M)

Date of decision: December 21, 2015

Malkiat Kaur and another

....Petitioner

Versus

Dharam Singh and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Hem Raj Bhardwaj, Advocate,
for the petitioners.

RITU BAHRI J.

Challenge in this petition is to the order dated 27.11.2015 passed by the Civil Judge (Junior Division), Chandigarh (Annexure P-3), whereby application filed by plaintiff-petitioners under Order 18 Rule 3-A CPC has been dismissed.

Plaintiff-petitioners have filed a suit for declaration that the alleged Will dated 30.10.2009 executed by Shadi Ram in favour of defendant No. 1-Dharam Singh was null and void. After framing of issues, the plaintiffs have concluded their evidence. Thereafter, Balbir Singh (DW-1) was examined-in-chief by way of affidavit on 27.08.2015 and affidavits of Dharam Singh (DW-2) and Surjit Singh (DW-3) were tendered on 30.09.2015. Cross-examination of Balbir Singh (DW-1) was completed on 14.09.2015 and that of Surjit Singh (DW-3) on 09.11.2015. On the same day, i.e. 09.11.2015 Dharam Singh (DW-2) offered himself for cross-examination. At that stage, an application (Annexure P-1) under Order 18 Rule 3-A CPC was made by the plaintiffs for striking off examination-in-

chief of Dharam Singh-defendant (DW-2).

As per the provisions of Order 18 Rule 3-A CPC, a party has to seek appropriate permission from the Court in case he intends to get himself examined after recording of the evidence of other witnesses. Order 18 Rule 3-A CPC is reproduced as under:-

“3A. **Party to appear before other witnesses.-** Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

The plaintiffs made an application (Annexure P-1) to strike off the examination-in-chief of Dharam Singh (DW-2), which has been dismissed on the ground that they (plaintiffs) did not raise any objection regarding examination of other two witnesses of the defendants i.e. Balbir Singh (DW-1) and Surjit Singh (DW-3). Once, the plaintiffs had cross-examined other two witnesses, they could not resort to the provision of Order 18 Rule 3-A CPC to strike off examination-in-chief of Dharam Singh (DW-2).

Learned counsel for the petitioner has referred to the judgment passed by a Co-ordinate Bench of this Court in **Jasvir Singh and another Vs. Jaspal Singh**, CR No.3595 of 2014, decided on 30.03.2015 (Annexure P-4) to contend that even if prior permission under Order 18 Rule 3-A was not taken before commencement of trial, it can be sought, at least, at the time before the party is examined. There should not be any breach of this Rule and it should be viewed seriously. If, no permission is taken under Order 18 Rule 3-A CPC to examine a party after examination of its other witnesses, the opposing party may oppose such evidence before the party's evidence/affidavit is tendered.

A perusal of the aforesaid judgment shows that the Court is

required to give permission cautiously to enable a party to record its evidence after the other witnesses have already been examined. In last paragraph of the judgment, it has been observed that objection for recording of evidence of a party has to be made when the witness is ready for his evidence, which in the facts of the present case has already been entertained. The objection of the plaintiffs-petitioners has already been entertained when Dharam Singh (DW-2) was examined. Once, the objections have already been heard and rejected, there is no need for defendant No.2-Dharam Singh to make a fresh application seeking permission of the Court for his cross-examination.

In view of the above, no ground is made out to interfere in the impugned order.

Dismissed.

21.12.2015
ajp

(RITU BAHRI)
JUDGE