

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

**CR No.1397 of 2016
Decided on: 24.02.2016**

Tara Chand and another

....Petitioners

Versus

Gurinder Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Ishwar Lal, Advocate
for the petitioners.

REKHA MITTAL J. (Oral)

The present petition lays challenge to an order dated 31.01.2016 passed by the Civil Judge (Junior Division), Rajpura, whereby application filed by the petitioners directing Gurinder Singh-respondent/plaintiff to cross-examine Gurpreet Singh (defendant No.2) prior to his cross-examination by the petitioners (defendants No.3 and 4) has been dismissed.

Counsel for the petitioners contends that Gurinder Singh has filed a suit for specific performance of an agreement to sell dated 16.10.2008 purported to be executed by Joginder Singh through his attorney Gurpreet Singh. Gurpreet Singh-defendant No.2 filed the written statement admitting claim of the plaintiff/respondent No.1. Though Joginder Singh in the written statement has denied the agreement in question but later he is also

siding with the plaintiff/respondent. The suit property has been sold by Gurpreet Singh in favour of the petitioners for a sale consideration of Rs.73.65 lacs. It is argued that as defendant No.2- Gurpreet Singh has admitted claim of the plaintiff/respondent, he needs to be cross-examined firstly by the plaintiff and thereafter he would be cross-examined by the petitioners, claiming ownership of the suit land on the basis of a legal and valid sale in their favour. It is further submitted that the learned trial Court has committed a serious error rather illegality in dismissing the application filed by the petitioners.

I have heard counsel for the petitioners, perused the records but find that the petition sans merit and deserves to be dismissed.

Counsel for the petitioners has failed to cite any provision in law which entitles him to seek any such direction that defendant No.2 should be cross-examined firstly by the plaintiff/respondent before the petitioners are called upon to cross-examine him. On the contrary, Sections 137 and 138 of the Indian Evidence Act deal with examination of a witness and order of examination, respectively. A relevant extract from Sections 137 and 138 reads as follows:-

“137. Examination-in-chief:- The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination:- The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination:- The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Order of examinations:- Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

XXX

XXX

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Section 138 says that witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined. In the case at hand, as per claim of the petitioners, Gurpreet Singh-defendant No.2 has admitted claim of the plaintiff but the petitioners are contesting claim of the plaintiff on the plea that they are *bona fide* purchasers for consideration, etc. As defendant No.2 has admitted claim of the plaintiff, no prejudice otherwise would be caused to the petitioners if cross-examination *qua* Gurpreet Singh is conducted by the plaintiff/respondent at any stage whatsoever. In this view of the matter, I do not find any error much less illegality in the impugned order as would call for intervention.

For the reasons afore-stated, the petition is dismissed *in limine*.

(REKHA MITTAL)
JUDGE

24.02.2016
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