

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

CR-4214-2016 (O&M)

Date of decision: 8.7.2016

Bant Singh

...Petitioner

Versus

Amrik Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.TS Salana, Advocate for the petitioner

SNEH PRASHAR, J.

By filing the present revision petition under Article 227 of the Constitution of India, the petitioner -defendant No.1 prayed for setting aside the order dated 05.04.2016 (Annexure P-3) passed by learned Civil Judge, Junior Division, Amloh vide which the oral evidence of the petitioner as well as of the other defendant was closed by order.

The submissions made by learned counsel for the petitioner have been heard.

Respondent No.1- plaintiff filed a suit for declaration against the petitioner and respondents No.2 to 9 that as per the last and valid Will No.175 dated 5.9.1997 executed by Jagir Kaur (since

deceased), he being best and nearest heir is owner of one half share of Jagir Kaur in the suit land.

The suit was contested by the petitioner (defendant No.1) and respondents No.2 to 9 by filing their respective written statements. The case was adjourned time and again for plaintiff's evidence and ultimately on 9.2.2016, his evidence was closed. Thereafter, the petitioner was allowed to lead his evidence.

The submission made on behalf of the petitioner is that he is an old man aged 75 years and is suffering from heart ailment because of which he could not produce his witnesses on the date fixed by learned trial Court and on 5.4.2016 without according him sufficient opportunity, his oral evidence was closed by order.

Pleading that non examination of the witnesses will cause an irreparable loss to the petitioner, learned counsel prayed that just one last opportunity be granted to the petitioner to lead his oral evidence.

The case is stated to be fixed for tendering document by the petitioner- defendant No.1 and for rebuttal evidence of the plaintiff. Considering the facts and circumstances and without going into the merits of the case, to my mind it shall be expedient and in the interest of justice that one more opportunity be given to the petitioner to produce his ocular evidence as well, which may

help the trial Court to better appreciate the issues involved and render substantial justice to the parties. It will not cause any prejudice to the plaintiff, if the petitioner is allowed to examine his witnesses as he will get an adequate chance to rebut that evidence.

Accordingly, the present petition is allowed. The impugned order dated 5.4.2016 is set aside and the learned trial Court is directed to grant one effective opportunity to the petitioner to adduce his ocular evidence subject to deposit of Rs.3000/- as costs with the District legal Services Authority, Fatehgarh Sahib.

It is made clear that if the petitioner fails to conclude his oral evidence on the date so fixed by learned trial Court, no further opportunity shall be granted.

8.7.2016
gsv

(SNEH PRASHAR)
JUDGE