

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

Date of decision:11.8.2016

1.

CR No.5124 of 2016(O&M)

Gurdeep Singh and another

....Petitioners

VERSUS

Yadwinder Singh

.....Respondent

2.

CR No.5154 of 2016(O&M)

Gurdeep Singh and another

....Petitioners

VERSUS

Rajinder Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

By way of this order I shall dispose of CR Nos.5124 and 5154 of 2016 as identical questions of law and facts are involved. However, for the sake of convenience, facts are taken from CR No.5154 of 2016.

Counsel for the petitioners has submitted that the present suit has been filed by Gurjeet Singh through his brother namely Gurdeep Singh to challenge sale deed dated 19.12.2012 on the premise that Gurjeet Singh is lunatic, idiot, dumb from his birth and is incapable of understanding anything. It is further submitted that though the suit was instituted in the year 2013 but even after framing of issues, the same remained pending for

evidence as well as arguments on stay application. It is further submitted that earlier the suit was pending in the Court at Ludhiana but later transferred to the Court at Payal. On certain dates, no proceedings were conducted as the Presiding Officer was not available and on certain other dates, cross examination of Gurdeep Singh brother and guardian of alleged lunatic was deferred for one reason or the other. It is further argued that a serious prejudice is likely to be caused to the plaintiff in case he is not allowed to examine the doctor for whose summoning the application was filed on 18.07.2016, though there was remiss on the part of the petitioner and his counsel in filing the application at an appropriate stage of the proceedings. It is prayed that the petitioner may be allowed one opportunity to examine Dr. Sudha Vasudev from Civil Hospital, Ludhiana, along with the relevant record.

I have heard counsel for the petitioners, perused the paper-book particularly the zimini orders (Annexure P-4 colly.) recorded by the Court below w.e.f. 28.03.2014 onwards.

Counsel for the petitioners has not disputed that there was lapse on the part of Gurdeep Singh and counsel representing the petitioner before the trial Court in filing an application for summoning the witness either within 7 days in compliance with order dated 28.03.2014 or till filing the application in July, 2016. Keeping in view the fact that the suit has been filed by the alleged lunatic through his brother Gurdeep Singh and is primarily based upon medical condition of said Gurjeet Singh, non-examination of the doctor would be of serious consequence rather fatal for adjudication of contesting claims on merits. That being so, in the interest of substantial justice, the petitioners are allowed one effective opportunity

to examine Dr. Sudha Vasudev subject, however, to payment of costs of Rs.10000/- in each case to be deposited with the trial Court well before the date to be fixed for examination of said witness payable to the respondent as per rules but with the condition that the petitioners would ensure presence of the witness along with relevant record without any intervention by the Court. In case, the witness fails to appear before the trial Court along with relevant record on the date fixed, the petition shall be deemed to be dismissed.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent in order to save him from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case he has any grievance to express.

AUGUST 11, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no