

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

**Civil Revision No.6258 of 2016 (O&M)
Date of Decision: 22.09.2016**

Suman Devi

.....Petitioner

Vs

Smt. Rewati Devi and another

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner being aggrieved by order dated 02.09.2016 (Annexure P-18) passed by Additional Civil Judge (Sr. Divn.) Rewari has filed this revision petition.

[2]. Brief facts as gathered from the record are that petitioner was contesting defendant in a suit for declaration and permanent injunction filed by her mother-in-law Smt. Rewati Devi Wd/o Sh. Ganga Singh Soni. Plaintiff/respondent No.1 being an old lady of more than 80 years of age, filed suit for declaration and permanent injunction on the premise that she was owner in possession of the residential house fully detailed in the plaint. Defendant No.1/petitioner is her daughter-in-law.

Husband of the plaintiff/respondent No.1 died on 24.12.2001. Contesting Defendant/petitioner in collusion with her husband brought the plaintiff/respondent No.1 and obtained her thumb impressions on some papers under the pretext of preparing ration card after the death of her husband. Some photographs were also obtained. Plaintiff/respondent No.1 being illiterate and having lost of vision was totally helpless and could not understand the *modus operandi*. She gave the thumb impressions on blank papers. On 25.04.2007, defendant/petitioner tried to dispossess her from the house forcibly and the plaintiff/respondent No.1 lodged FIR No.143 on 14.05.2007 against the husband of the defendant i.e. Purshottam Dass and then she came to know about the fraud and the documents prepared by the defendant/petitioner. A gift deed was prepared by the defendant/petitioner in a fraudulent manner.

[3]. After filing of the suit, the case processed. An application was filed for appointment of commission for recording cross-examination of the plaintiff. The said application was opposed by the contesting defendant/petitioner on all counts. Petitioner alleged that the plaintiff/respondent No.1 is residing with her son Shiv Kumar and she denied the factum of her incapacity to walk.

[4]. Trial Court vide order dated 21.08.2013 accepted the prayer for appointment of commission for recording cross-examination of the plaintiff/respondent No.1. Sh. Satish Dagar was appointed as Commissioner, who shall visit the address of the plaintiff along with both the parties after giving proper intimation to them for recording cross-examination of the plaintiff. The date was fixed for visit of the commissioner i.e. 18.09.2013. No report was submitted by the commission. Notice was sent to him for 19.10.2013. On 19.10.2013, file was not received and the case was adjourned for 03.12.2013 for awaiting the report. On the adjourned date as well report of the commission was not received. The file was lying with the commission, therefore, the case was adjourned for 04.02.2014 for report of the evidence recorded by the commission in respect of cross-examination of the plaintiff. The case was further adjourned to 21.03.2014 on the same premise. On 21.03.2014, a new lawyer on behalf of defendant No.1 appeared. Local Commissioner was also present in Court and he requested for short adjournment for executing the commission i.e. recording the cross-examination of the plaintiff. The case was adjourned for 11.04.2014.

[5]. Against the order dated 21.08.2013, petitioner/defendant No.1 filed Civil Revision No.2630 of 2014 titled as

Suman Devi vs. Rewati Devi and Anr. on the premise that despite number of opportunities, Local Commissioner has not conducted the cross-examination. This Court recorded the reason that the plaintiff had suffered a fracture of D-11 vertebra and was advised complete bed rest for three months. This Court ultimately issued notice of motion on the ground that period of three months would expire in April and the impugned order was passed on 21.08.2013. The factual position may have been altered altogether. The operation of the order dated 21.08.2013 was stayed on 09.04.2014 in the aforesaid revision petition. Ultimately, the revision petition was accepted vide order dated 17.11.2015 by passing the following order:-

“There is no representation on behalf of respondents. The grievance of the petitioner is that the permission may be granted to the plaintiff to be examined at her own residence on the ground of illness. The disability pleaded was fracture on the vertebra and advised bed rest. It is also pleaded that he may be immobilized for a period of three months and three months are reported to have expired. It is not possible for me to assess that there is still subsisting disability. The order already passed is set aside. The plaintiff shall be brought before the Court for tendering her own evidence, if she so chooses.

Revision is allowed accordingly.”

[6]. Thereafter an application for implementation of order dated 17.11.2015 passed by the trial Court was moved before

the trial Court by the petitioner/defendant No.1. The said application was contested by the respondent, who appointed her son Shiv Kumar Soni as her Special Power of Attorney to depose in the Court. In the aforesaid application, petitioner asserted that the old lady i.e. plaintiff/respondent No.1 should come to the Court in person to depose in the suit after acceptance of Civil Revision No.2630 of 2014.

[7]. The Civil Judge considered the submission made by both the parties and dismissed the application of the defendant/petitioner on the premise that Special Power of Attorney will adduce evidence as Attorney and thereafter the Court would be at liberty to decide the suit on merits. Plaintiff cannot be compelled to depose in person. The effect of statement of Attorney would be seen at the time of trial.

[8]. The prayer in the present revision petition is for implementation of order dated 17.11.2015 passed in Civil Revision No.2630 of 2014 by this Court. In my considered opinion, plaintiff/respondent No.1 was at liberty to either appear in person as witness before the trial Court or could appear through her Attorney. The evidentiary value of statement of Special Power of Attorney would be gone into by the trial Court at relevant stage.

[9]. In my considered opinion the order passed by the trial Court cannot be faulted with. No party can be compelled to depose in person. The concept of appointment of attorneys is meant for such facility of the party to depose in the Court. The effect of evidence made by the attorney could be seen by the trial Court at an appropriate stage. If the party has not ventured to come present herself/himself for cross-examination, the trial Court would be at liberty to consider the statement of the attorney in accordance with law.

[10]. In view of aforesaid, I find no justification to interfere with the impugned order passed by the trial Court. This revision petition is accordingly dismissed.

September 22, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No