

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

C.R. No.7901 of 2016

Date of Decision.23.11.2016

Bahadur Singh s/o Shri Matu Ram

.....Petitioner

Vs

Sh. Matu Ram (deceased) through LRs and others

.....Respondents

Present: Mr. Jagram Singh Cooner, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner is aggrieved of the impugned orders (Annexure P-1 and P-2) dated 08.11.2016 and 10.11.2016 respectively in suit seeking declaration that the sale deed 25.05.2009 executed by defendant No.1 in favour of defendant No.2 in respect of 4 kanals 13 marlas of land being 93/211 share out of the land bearing Khewat/Khatauni No.219/297, Khasra No.26//2 (1-9) 3(4-13), 8/3(4-9), Khasra Kite-3 measuring 10 kanals 11 marlas situated in village Taprian, Hadbast No.214, Tehsil and District Panchkula is forged, fabricated, illegal and null and void.

The suit aforementioned was according to Mr. Cooner was filed on 22.05.2012. As per the provisions of Order 18 Rule 4(2) CPC, the Court below appointed commissioner for recording the statement of the plaintiff's witnesses. On 08.11.2016, PW-Mam Chand was present. He was partly cross-examined and his cross-examination was deferred on the request of learned counsel for the defendant. Another witness PW-Mukesh Mahajan, NSK, DC Office, Panchkula was present and he had sought one month's time but the same was declined and the matter was adjourned for

other remaining evidence of plaintiff. Vide impugned order dated 10.11.2016, the evidence has been closed.

He submits that it was not within the control of the plaintiff to insist Mukesh Mahajan, NSK to produce the record. The Court should have restricted the time by binding down the aforementioned witnesses but not in the manner and mode as indicated above.

I have heard learned counsel for the petitioner and appraised the paper book. The relevant impugned orders dated 8.11.2016 and 10.11.2016 are extracted here-in-below:-

“Present: As above.

File received back from Civil Ahlamad. Two PWs are present. Out of them one PW Mam Chand is present, partly examined and cross-examination is deferred on the request of ld. Counsel for the defendant as copy of affidavit supplied today itself. Other PW Mukesh Mahajan NSK, DC Officer Panchkula is present and sought one month time to produce the summoned record. A separate statement has been recorded in this regard. But his request for one month is declined. PW Mukesh Mahajan is discharged for today and bound down for 10.11.2016. Cross-examination of PW Mam Chand and remaining evidence of plaintiff to be also produced at responsibility of plaintiff on the date fixed. It is made clear that no further opportunity shall be granted for PWs.

-sd-

(Savita Kumari)

ACJ(SD) PKL.8.11.2016

Present: As above.

File received back from Civil Ahlmad. One PW Mam Chand is present and recorded by the court commissioner. PW Mukesh Mahajan was bound down for today but has not appeared despite last opportunity. Perusal of the case file revealed that several opportunities were granted to the plaintiff to conclude his entire evidence including last opportunities but he failed to lead his entire evidence, there is no ground for further adjournment of case for plaintiff evidence, hence evidence of plaintiff is closed by order of

the court. Now to come up on 15.01.2017 for evidence of defendants to be produced at own responsibility. Only three opportunities to be given to the DWs in future for concluding the evidence.

*-sd-
(Savita Kumari)
ACJ(SD) PKL.10.11.2016”*

I am of the view that the Court below ought not to have adopted a strict approach. It should have bound down Mukesh Mahajan, NSK to bring the record within the time bound manner. If he failed to do so, it should have resorted to provisions of Order 16 Rule 12 CPC but should not have closed the evidence.

It is stated that other witness Mam Chand had been examined and only documents were to be tendered and no further evidence is required except NSK and the documents.

I am of the view that the aforementioned orders under challenge are liable to be set aside and opportunity should have been granted to the petitioner-plaintiff to tender the documents in accordance with law. The court below should have fixed the time line by issuing directions to the witnesses to bring the record within specified period. The impugned orders are set aside and the opportunity is granted to the petitioner-plaintiff to tender documents in accordance with law and take steps as noticed above for issuing appropriate direction to the summoned witness namely Mukesh Mahajan, NSK.

The revision petition stands allowed with the above observations.

(AMIT RAWAL)
JUDGE

November 23, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No