

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8151 of 2016(O&M)
Date of Decision:03.12.2016

Rakesh Prashar and anotherPetitioner

Versus

Smt. Usha Prashar and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Anil Shukla, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 09.11.2016 passed by Civil Judge (Senior Division), Chandigarh vide which application filed by the petitioners to examine the witnesses has been dismissed.

[2]. A suit for declaration was filed by the plaintiffs on the ground that they were owners in possession of Booth No.3025-D, Sector 22-D, Chandigarh. The declaration was sought claiming the Will dated 04.10.1994 to be forged and fabricated. Consequent mutation was also challenged. Effort to cross examine Raghbir Singh through Local Commissioner was declined.

[3]. Trial Court in its order dated 24.07.2014 noticed that Raghbir Singh came present in the Court on 31.05.2014 and tendered his affidavit in evidence. Thereafter, the witness did not turn up on any of the dates fixed by the Court i.e. 04.07.2014, 19.07.2014 and 24.07.2014. Plea of witness being ailing was discarded by the Court for want of medical evidence. The trial Court gave last opportunity to the petitioners for concluding entire evidence with a clear stipulation that in case the defendants-petitioners failed to conclude the entire evidence on the date so fixed, evidence would be deemed to be closed by order of the Court. The case was adjourned to 19.07.2014. On the adjourned date i.e. 19.07.2014, one witness was examined and thereafter, an application was moved despite clear direction for leading the entire evidence on the date fixed. The case was fixed for cross examination of Raghbir Singh. The witness refused for being cross examined and stated that he will get himself to be cross examined in the presence of his counsel. Thereafter, neither the witness, nor his counsel turned up whereas counsel for the plaintiff remained present in the Court through out. At about 2:00 PM, the witness turned up and on being asked, he again refused to be cross examined and asserted that he will get himself to be cross examined only in the presence of his counsel.

[4]. Trial Court noticed the events of previous dates as well. 19.07.2014 was the last opportunity for the defendants to conclude their evidence as the defendants had already availed several opportunities to lead evidence.

[5]. There are numerous instances on record which have been discussed in paras No.14, 15, 16 and 17 of the order dated 04.10.2016 passed by this Court in the revision petition i.e. CR No.5955 of 2014. For ready reference, these paras are being reproduced hereasunder:-

“[14]. Learned counsel for the respondents also highlighted number of facts in his written statement to contend that notice was issued to the defendants on 01.10.2005. Defendants filed written statement on the fifth date of hearing. Written statement on behalf of defendant No.3 was filed on 14th date of hearing i.e. on 23.11.2006. On 16th date, the issues were framed. Defendants consumed 14 adjournments for filing the written statement. After filing the written statement, the evidence of the plaintiffs started w.e.f 09.04.2007. During the period of plaintiffs’ evidence, defendants remained adamant not to cross examine the plaintiffs’ witnesses. Cost was imposed on the defendants for not cross examining. It was so recorded in the order dated 14.09.2014. Cross examination of PW 1

was completed on 16.07.2008. PW 2 tendered his affidavit on 11.09.2008. The cross examination of PW 2 was completed over a period of 3 years and 4 months i.e from 11.09.2008 till 07.01.2012. The affidavit was tendered on 28th date of hearing and the same was completed on 49th date of hearing.

[15]. Learned counsel further submitted that there were number of dates on which PW 2 Renu was present and she had signed the order sheet and yet it was recorded that no PW was present. On 24.10.2009, it was recorded that PW Renu was not present, though on the side of the order sheet signature of PW Renu was visible. Same was the position on 12.03.2010 and 28.11.2011.

[16]. Learned counsel also emphasized that defendants No.1 and 2 filed numerous applications and sought time for arguments. On three occasions, costs were imposed i.e on 14.09.2007, 22.01.2009 and 14.05.2010. Even the defendants moved an application for transfer of civil suit on 26.03.2012. Thereafter, the same was withdrawn after availing three opportunities on 18.07.2012. Thereafter, an application for secondary evidence was moved on 14.05.2013. The matter remained pending for consideration till 01.05.2014. Thereafter, it was decided. In the intervening period, defendants did not appear. They were

proceeded against ex parte. An application for restoration was filed and that also delayed the proceedings. Plaintiff in all fairness did not object to the restoration of the status of defendants. Defendants were granted first opportunity for leading evidence on 02.05.2013 i.e. 64th date of hearing. Evidence of the defendants was closed on 24.07.2014 i.e on 98th date of hearing.

[17]. Learned counsel again submitted that firstly the conduct of the defendants was delaying the disposal of the suit by not cross examining PW 1 and PW 2 for such a long period. The cross examination of these two witnesses took 4 years and 6 months. Thereafter, from 02.05.2013 till 24.07.2014, a period of more than one year was consumed for tendering only one witness namely Rakesh Prasher who was to be cross examined within one day after he refused to be cross examined at least on 2 dates when the counsel for the plaintiffs had to wait whole day. The witness did not cooperate even though he was present in the Court. In view of observations made by the trial Court in the order dated 19.07.2014, learned counsel contended that the petitioners do not deserve any indulgence at the hands of this Court.”

[6]. The above mentioned Civil Revision No.5955 of 2014 was filed by the petitioners in this Court which was dismissed

vide detailed order dated 04.10.2016. The effort to get a Local Commissioner appointed for cross examination of Raghbir Singh witness of the Will at Patiala was dismissed and the evidence of the petitioners was closed by the trial Court vide order dated 24.07.2014.

[7]. When the case was fixed for rebuttal and arguments, the application for examination of the witnesses came to be filed at the instance of the defendants whose conduct was deprecated with reference to interlocutory orders on record. Statement of facts recorded in aforesaid revision petition is glaring enough to decline indulgence in the present revision petition.

[8]. Much emphasis has been made on the order of acquittal recorded by the Criminal Court. Now the witnesses are sought to be examined despite the fact that statement of PW 7 in the Criminal Court was recorded about more than 3 years back. Petitioners-defendants have already availed numerous opportunities to lead evidence. The suit was fixed for rebuttal and arguments since 31.07.2014. Petitioners did not examine the witnesses in question even for more than 4 years. The genuineness of Will dated 13.09.1994 executed by late Sh. Satkam Prashar is the subject matter in the main litigation. Attesting witness namely Raghbir Singh was sought to be

examined in the earlier attempt which was declined in view of detailed facts recorded in the order dated 04.10.2016. Petitioners cannot be permitted to rake up the issue in piece meal particularly when the case was fixed for rebuttal and arguments since 31.07.2014.

[9]. In view of facts and circumstances on record, this Court is of the considered view that there is no error of jurisdiction in the order dated 09.11.2016 passed by Civil Judge (Senior Division), Chandigarh, nor the same has suffered with any perversity. This revision petition is accordingly dismissed.

03.12.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No