

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

CR No. 8360 of 2016(O&M)

Date of decision: 12.12.2016

Sheela Devi

....Petitioner

VERSUS

Chuhar Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sarju Puri, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 26.09.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Phillaur whereby evidence of the petitioner/plaintiff has been closed by order of the Court.

Counsel for the petitioner would submit that the plaintiff has filed a suit for possession by way of specific performance of agreement to sell dated 11.07.2008 in respect of land measuring 155 kanals 13 marlas, detailed in head-note of the plaint. The petitioner has already adduced evidence by examining as many as five witnesses but examination of Sartaj Singh PW-5 scribe of the agreement could not be completed as his cross examination was deferred on two occasions at the behest of the contesting defendants. It is argued with vehemence that a serious prejudice shall be caused to the petitioner in case Sartaj Singh PW-5 is not permitted to tender himself in the witness box for his remaining cross examination. It is prayed that one opportunity may be allowed to the petitioner to produce Sartaj Singh PW-5 for his further cross examination. Counsel has apprised

the Court that after closing of evidence of the petitioner, the respondents/defendants have not adduced any evidence and the case is now fixed for 05.01.2017.

I have heard counsel for the petitioner, perused the paper-book particularly the various zimini orders reproduced in the grounds of revision.

Sartaj Singh PW-5 was examined in chief on 05.03.2016 and his cross examination was deferred at the request of counsel for the defendants and he was bound down for 22.03.2016. Thereafter, the said witness was again present before the Court on 17.08.2016 and he was partly cross examined and his cross examination at the behest of defendants No.5 to 10 was deferred on the request made by their counsel and the case was adjourned to 26.09.2016. On the adjourned date, evidence of the petitioner has been closed by order.

Keeping in view the fact that Sartaj Singh PW-5 was present in the Court on two occasions but his cross examination was deferred on request of counsel opposite representing the defendants coupled with principles of natural justice and in absence of any finding by the trial Court that plea of the petitioner/plaintiff for adjournment of the case is actuated by malice, the petition stands disposed of with a direction that the petitioner shall get one effective opportunity to tender Sartaj Singh PW-5 in the witness box on the date already fixed before the trial Court for recording evidence of the defendants, for the purpose of completion of his cross examination. In case, Sartaj Singh PW-5 appears in the witness box on that date, his remaining cross examination would be completed before starting evidence of the defendants/respondents.

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

DECEMBER 12, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no