

**Civil Revision 8542 of 2015(O&M)**  
**Date of Decision: 18.1.2016**

**Harjit Singh**

**---Petitioner**

**versus**

**Tara Singh and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr. Sandeep Singal, Advocate  
for the petitioner**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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**Rekha Mittal, J.**

The present petition lays challenge to order dated 23.09.2015 (Annexure P-6) whereby the applications filed by the petitioner under Order XVIII Rule 17 of the Code of Civil Procedure (for short “CPC”) seeking permission to appear in the witness box for the purpose of his cross-examination and another application under order I Rule 10 and order VI Rule 17 CPC for impleading daughters of Tara Singh respondent No. 1 as proforma defendants, have been dismissed.

So far as the application under order XVIII Rule 7 CPC is concerned, counsel for the petitioner has submitted that evidence of the petitioner was closed on 11.04.2014 in view of statement made by counsel for the petitioner but at that time, it was not realized that though the petitioner has appeared in the witness box and his examination-in-chief has been recorded but his cross examination remains to be conducted by the

opposite party. It is further argued that in case cross examination of the petitioner Harjit Singh is not conducted by the defendants/respondents, his statement would not be read into evidence and as a result, it would cause serious prejudice to his right to seek adjudication on the merits of the controversy wherein he has claimed the suit property to be coparcenary property and, therefore, his father Tara Singh having no right to execute the Relinquishment Deed in favour of his sons, co-defendants in the suit.

The learned trial court has dismissed the application by holding that there is no justifiable explanation for the petitioner withholding himself from the witness box when otherwise the case is an old one pending since the year 2010. The Court has not taken into consideration the prejudicial affect of non-cross examination of the petitioner in his endeavour to seek adjudication of the case on merits. The rules of procedure are handmaid of administration of justice and the same are to be applied to enhance the cause of justice and not to scuttle the same. In view of the above, I am of the considered opinion that the petitioner can be afforded one opportunity to appear in the witness box for the purpose of cross examination subject, however, to payment of costs of Rs. 10,000/-.

In view of what has been discussed hereinabove, the impugned order dated 23.9.2015 dismissing the application filed by the petitioner under Order XVIII Rule 7 CPC is allowed in the aforesaid terms. The costs of Rs. 10,000/- shall be deposited with the trial court for payment to the respondents. On completion of cross examination of the petitioner, the

respondents shall be entitled to one opportunity to lead evidence to rebut the evidence of the petitioner/plaintiff.

So far as the application under Order I Rule 10 and Order VI Rule 17 CPC is concerned, the petitioner knew it from day one that he has staked his claim to the suit property on the premise that the same is joint Hindu family coparcenary property and therefore, his sisters, daughters of Tara Singh may be required to be impleaded in the case. This apart, the petitioner has not claimed any relief against his sisters who are sought to be impleaded as proforma defendants only. In this view of the matter, I do not find any merit in the contentions of counsel for the petitioner that the impugned order dismissing his application under Order I Rule 10 and Order VI Rule 17 CPC calls for any intervention.

Before parting with this order, it is pertinent to point out that the petitioner's prayer for appearing in the witness box for his cross examination has been allowed without notice to the respondents-defendants with an intent that they are saved from unnecessary harassment and expenses. However, the respondents would be at liberty to file an appropriate application in case they have any grievance to express against the order passed by this Court.

With these observations, the petition stands disposed of.

**(Rekha Mittal)**  
**Judge**

**18.1.2016**  
PARAMJIT