

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 834 of 2014

Date of Decision: 27.04.2016

Manphool and Another

... Petitioner(s)

Versus

Rajinder Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Pritam Saini, Advocate
for the petitioner(s).

Mr. I.S.Pabla, Advocate
for respondents No.2, 3, 7, 8 & 9.

Shekher Dhawan, J.

Present petition is challenge to the order dated 27.1.2016, passed by learned Civil Judge (Junior Division), Kurukshetra vide which application filed by the defendants No.1 & 2/petitioners under Order 18 Rule 17 CPC read with Section 151 CPC was dismissed.

Learned counsel for the petitioners submitted that onus to prove issue No.1 was to be put on defendants, who are propounder/beneficiaries of the Will as per judgment rendered by

Hon'ble the Apex Court in ***Shanti Devi v. Daropti Devi 2007(1) Apex Court Judgments 346 (SC)***.

Learned counsel for the petitioners further submitted that witnesses namely Mr. Ashok Kumar Khera, Advocate (DW.3), Jagan Nath (DW.4) and Mr. W.C.Juneja, Advocate (DW.9) may be recalled for putting the Will to them. Earlier, the relevant questions could not be put to them because of mistake of the counsel and it is settled law that party should not be put to suffer because of inadvertence on the part of the counsel. On this point, reliance has been placed upon judgment rendered by this court in ***Shera v. Asha Ram 1987(2) HLR 359***. But that prayer was declined by the court below without any justified reason and the impugned order is liable to be set aside.

Learned counsel for respondents No. 2, 3, 7, 8 & 9 submitted that the Court below has already considered all these facts while passing the order under challenge. More so, there was no justification for recalling the witnesses again and again for recording their statements, otherwise, there is no end.

Having considered the submissions made by learned counsel for the parties and gone through the record of the case file and impugned order, this Court is of the considered view that issues were framed in this case on 19.4.2011 in presence of learned counsel for the parties and no objection was raised regarding framing of format of the issues or onus being placed upon the parties. There was no challenge to the said order. Thereafter, both the parties led their respective evidence and the case was fixed for rebuttal evidence and arguments

and at that stage, application for leading additional evidence was filed for recalling the witnesses. The Court below has rightly declined the prayer of re-framing of issue No.1 because plaintiffs were required to prove the plea of fraud and on that account, the facts of the present case are distinguishable from the facts of ***Shanti Devi's case*** (*supra*).

As regard to recalling of witnesses, namely Mr. Ashok Kumar Khera, Advocate (DW.3), Jagan Nath (DW.4) and Mr. W.C.Juneja, Advocate (DW.9), there is absolutely no ground for recalling all these witnesses for the purpose of further statements merely on the ground that applicants have taken the plea that because of mistake on the part of their counsel, such questions could not be put to the witnesses. On this point, law is settled that witness is not required to be called again and again for same purpose. Such a view was taken by Hon'ble the Apex Court in ***Ram Rati v. Mange Ram (D) through LRs. & Others 2016(2) Recent Apex Judgments (R.A.J.) 400***. As per the view taken by Hon'ble the Apex court, the basic purpose of Order 18 Rule 17 CPC is to enable the Court to clarify any position or doubt and the Court may either *suo motu* or on the request of any party, recall any witness at any stage. This power can be exercised at any stage. Hon'ble the Apex Court also observed that inherent powers under Section 151 CPC can be invoked only where there is no specific provision in the procedure to meet the situation and in the interest of justice. The purpose of the provisions of Order 18 Rule 17 CPC is very limited. The discretion of the Court has to be exercised judiciously.

As per perusal of Order 18 Rule 17 CPC, the power to recall the witness has been given to the Court only to put the Court questions. For ready reference, Order 17 Rule 17 CPC is being reproduced:-

"17. Court may recall and examine witness— The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."

In view of above, case of the petitioners for recalling of witnesses, namely Mr. Ashok Kumar Khera, Advocate (DW.3), Jagan Nath (DW.4) and Mr. W.C.Juneja, Advocate (DW.9) for the purpose of further examination by way of additional evidence is not made out.

As regard to production of Will at the time of recording of statements of all these three witnesses, the original Will was produced by DW.7 Zile Singh, Office Kanungo, Tehsil Manesar on 28.10.2013 and certified copy thereof is available on the file as Mark DW.7/A. The certified copy of Will Mark DW.7/A has been proved as Ex.DW.9/A by examining the scribe of the Will DW.9 Mr. W.C.Juneja, Advocate on 28.10.2013 itself.

The court below has considered all the aspects while deciding the application filed by the petitioners and was conscious of the fact that issues were framed in this case on 19.4.2011. Plaintiffs' evidence was closed on 10.5.2012. Defendants' evidence was closed on 10.1.2014 after availing 20 adjournment for the purpose and that way

more than reasonable opportunity had already been given to the defendants. No case is made out at all for recalling the witnesses at the instance of the petitioners as per the provisions of Order 18 Rule 17 CPC read with Section 151 CPC. There is absolutely no illegality in the order under challenge.

In view of above, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

April 27, 2016

"DK"