

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

**CR No.3039 of 2014(O&M)
Date of Decision: 24.10.2017**

Amrita Gill

...Petitioner

Versus

Daljeet Gill and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Hamid Hassan, Advocate
for the petitioner.

Respondents No.1 to 4 proceeded against ex parte.

Mr. Robert Kanwar, Advocate and
Mr. Kanwar Ashwani Kumar, Advocate
for respondent No.5.

Mr. Rajesh Gaur, Advocate
for respondent No.6/HUDA.

Mr. A.S. Saini, DAG, Haryana
for respondents No.6 and 7.

RAJ MOHAN SINGH, J.

[1]. Action impugned herein is the order dated 08.10.2013 passed by Civil Judge (Junior Division), Panchkula vide which evidence of the petitioner was closed and the order dated 18.01.2014 whereby application for leading additional evidence was dismissed.

[2]. Plaintiff/petitioner filed a suit for declaration to the effect that the Will dated 11.05.1993 executed by late Smt. Pritam

Kaur was superseded by last Will dated 20.12.2007 and the plaintiff/petitioner is the owner of the suit property i.e. House No.103, Sector 3, Panchkula to the extent of 1/3rd share. Mandatory injunction and permanent injunction were also sought.

[3]. Defendants/respondents contested the suit. They filed an application under Order 7 Rule 11 CPC for rejection of the plaint. The application remained pending for some time and ultimately, it was dismissed vide order dated 05.02.2013.

[4]. Issues were framed on 01.05.2013. The evidence of the plaintiff/petitioner was closed on 08.10.2013.

[5]. Perusal of the interlocutory orders on record shows that the evidence of the plaintiff started w.e.f 23.05.2013 after framing of the issues. Since the Presiding Officer was to be on leave on 23.05.2013, therefore the case was adjourned to 12.08.2013 on 21.05.2013. On 12.08.2013, evidence of the plaintiff was not present and the case was adjourned to 29.08.2013 for evidence of the plaintiff. Last opportunity was recorded in the order dated 12.08.2013.

[6]. On 29.08.2013, the file was received from the Ahlmad after getting the testimony of PW1 Amrita Gill (petitioner) recorded through one of the empanelled Court Commissioner. Honorarium was paid to the Commissioner, which was

accepted. Cross examination of PW 1 was deferred to 13.09.2013 as learned counsel for defendant No.3 was in personal difficulty on account of death of his relative. On 13.09.2013, the case was adjourned to 26.09.2013 at the instance of the plaintiff for cross examination of PW 1 Amrita Gill and for remaining evidence of the plaintiff in pursuance of the previous order as in the pre-lunch session, no Court Commissioner was available to him and in post-lunch session, he was busy in some personal work at home. On the adjourned date i.e. 26.09.2013, the file was received from Ahlmad after getting the testimony i.e. examination-in-chief of PW 2 recorded. The cross examination was deferred at the instance of proxy counsel appearing on behalf of defendant No.2. On request, the case was adjourned to 08.10.2013 for cross examination of PW 2 as well as for remaining evidence of the plaintiff at her own responsibility. The witness was bound down for the date fixed.

[7]. On 08.10.2013, the file was received from Ahlmad after getting the testimony of one of the PW recorded through one of the empanelled Court Commissioner against fixed honorarium. Learned counsel for the plaintiff also placed on record some documents with a request to consider the documents in the evidence of the plaintiff. No other witness of the plaintiff was present. The Court observed that it was fourth effective

opportunity including last and final opportunity granted to the plaintiff/petitioner for concluding her entire evidence. Since the case was in action plan of 2013 and proposed to be decided on priority basis, therefore, the Court closed the evidence of the plaintiff by order. The case was adjourned to 29.10.2013 for evidence of the defendants.

[8]. On 29.10.2013, an application for leading additional evidence on behalf of the plaintiff was moved. The said application was dismissed by the trial Court on 18.01.2014 by observing that after closing the evidence of the plaintiff on 08.10.2013, the evidence of the defendants was also closed vide order dated 11.12.2013. Since the case was of the year 2009 and was brought in the action plan of 2013-14, therefore, trial Court felt it appropriate not to grant any indulgence for permitting the plaintiff to lead additional evidence.

[9]. I have heard learned counsel for the parties.

[10]. Learned counsel for the petitioner submitted that application for leading additional evidence was moved on 29.10.2013 before closure of the evidence of the defendants on 11.12.2013. The evidence of the plaintiff started w.e.f 23.05.2013, but the case was adjourned to 12.08.2013 on 21.05.2013 as the Presiding Officer was to be on leave on 23.05.2013. On the very first day i.e. 12.08.2013, last

opportunity was granted to the plaintiff to lead her entire evidence and the case was adjourned to 29.08.2013. On 29.08.2013, examination-in-chief of PW1/petitioner was recorded, however the cross examination of PW 1 was deferred at the instance of learned counsel for defendant No.3 who was in personal difficulty. Therefore, the said adjournment was not attributable to the plaintiff/petitioner. On 13.09.2013, the case was adjourned at the instance of the plaintiff. Perusal of the order dated 13.09.2013 shows that the case was fixed for cross examination of PW 1 Amrita Gill and for remaining plaintiff evidence in pursuance of the previous order as in the pre-lunch session, Court Commissioner was not available to learned counsel for the plaintiff and in the post-lunch session, he was busy in some personal assignment at home. On the adjourned date i.e. 26.09.2013, the examination-in-chief of PW 2 was recorded and the cross examination of the witness was deferred on the request of proxy counsel for defendant No.2 as he had gone to Kalka Court. Learned counsel submitted that the adjournment of the case on 26.09.2013 for cross examination of PW 2 by defendant No.2 was also not attributable to the plaintiff. On 08.10.2013, the trial Court closed the evidence of the plaintiff. In view of aforesaid, learned counsel submitted that it was not a case of four effective opportunities to the plaintiff.

[11]. Having perused the record, I am of the view that since the application for leading additional evidence was moved before closing the evidence of the defendants, therefore, it is not a case of leading any evidence in rebuttal by means of additional evidence, rather the plaintiff seeks to lead additional evidence in his affirmative evidence. The evidence qua specimen signature of late Smt. Pritam Kaur is sought to be adduced in the additional evidence in order to lead evidence in the context of Will. The mother of the plaintiff also signed on the life certificate submitted in Punjab National Bank for the year 2004-2007. Certificate of late Smt. Pritam Kaur dated 15.02.2002 was issued by Secretary, Zila Sainik Board. Gun licence of the plaintiff/petitioner was issued by Deputy Commissioner, Panchkula. Ration card of the petitioner and her mother was also issued. Plaintiff wants to summon concerned clerk from the above said concerned offices along with record to tally the signature. The plaintiff also wants to summon criminal case No.7 dated 04.01.2012 titled State Vs. Amrita and others which is pending in the Court at Panchkula besides summoning the treatment card of the plaintiff/petitioner dated 06.06.2008 and 17.07.2008 in Emergency, General Hospital, Sector-6, Panchkula and also wants to examine Dr. Parveen Kumar Janjua, Forensic Consultant as well as Jitender Gill real brother

of the plaintiff/petitioner. The prayer for leading additional evidence was declined by the trial Court primarily on the ground that the evidence of the defendants was closed vide order dated 11.12.2013 and the plaintiff did not give reason as to why the evidence was not led in her affirmative evidence as the same was well within her knowledge.

[12]. Evidently, from the interlocutory orders, it can be gathered that the plaintiff had only two effective opportunities i.e. 12.08.2013 and 13.09.2013. Proceedings dated 29.08.2013 and 26.09.2013 were adjourned at the instance of defendant No.3 and defendant No.2 respectively.

[13]. It is a settled principle of law that if something remains obscure, that can be allowed to be led by means of additional evidence. Additional evidence is meant to secure cause of justice, rather to thwart it.

[14]. In view of facts and circumstances of the case, I deem it appropriate to set aside the impugned orders and grant one opportunity to the plaintiff to lead her entire evidence by availing process of the Court in accordance with law. In the event of leading evidence by the plaintiff, defendants shall have right to rebut the same for which trial Court would grant them opportunity in accordance with law. The aforesaid permission to lead evidence shall however be subject to payment of cost of

Rs.10,000/- to be paid to the defendants in equal proportion.

The payment of cost shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

24.10.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No