

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

CR-318-2017

Date of decision: 19.1.2017

Lashkar Singh through his legal representatives

...Petitioners/ defendants

Versus

Amrik Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.HK Aurora, Advocate for the petitioners

SNEH PRASHAR, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the orders dated 5.1.2016 (Annexure P-1) passed by learned Civil Judge (Senior Division), Chandigarh vide which, the cross-examination of PW1 Balbir Singh was treated as 'Nil' and the order dated 5.9.2016 (Annexure P2) vide which the application filed by the petitioners for recalling the order dated 5.1.2016 was dismissed by learned trial Court.

Respondents No.1 to 6- plaintiffs (hereinafter referred to as 'the plaintiffs') had filed a suit for declaration and also for permanent injunction seeking to restrain the defendants from alienating the property measuring 1 kanal 13 marlas comprising in Khewat No.432 Khatauni No.515, Khasra No.998(1-13) as per the

Jamabandi for the year 2006-07 situated in village Jandu Singha, Tehsil and District Jalandhar.

The submissions made by Mr.H.K. Aurora, Advocate representing the petitioners have been considered.

Learned counsel for the petitioners submits that the counsel of the petitioners was busy before the Appellate Court on account of evidence in another case and could not appear for cross-examination of PW1 Balbir Singh. Due to laps on the part of the counsel, the petitioner should not be left to suffer. Submitting that non- cross-examination of PW1 Balbir Singh, who is an important and material witness, will cause irreparable loss to the petitioners, learned counsel prayed that just one more opportunity be granted to cross-examine him.

Indeed, non cross-examination of the witness by the petitioners will prejudice their defence as it will amount to admission of all facts etc. stated by witness whereas the petitioners with all vehemence are contesting the suit. Thus, in the interest of justice, to avoid unnecessary delay in the matter by issuing notice etc. to the respondents, in my considered opinion, the petitioners-defendants deserve to be given one last opportunity to cross-examine PW1 Balbir Singh. It will cause no prejudice to the rights of the respondents-plaintiffs. The evidence recorded in due process of law will also help the trial Court to better appreciate the issues

involved and render substantial justice to the parties.

Resultantly, the present revision petition is allowed. The orders dated 5.1.2016 and 5.9.2016 are set aside and the learned trial Court is directed to grant one effective opportunity to the petitioners-defendants to cross-examine PW1 Balbir Singh subject to deposit of Rs.3000/- as cost with the District legal Services Authority, Jalandhar.

However, it is made clear that if the petitioners -defendants fail to cross-examine the said PW on the date so fixed by learned trial Court, no further opportunity shall be granted to them.

19.1.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No