

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

CR-3452-2017 (O&M)

Date of decision: 17.5.2017

Parkash Kaur

...Petitioner

Versus

Harjinder Singh and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Karanjit Singh, Advocate for the petitioner

SNEH PRASHAR, J.

CM-10767-CII-2017

Allowed as prayed for.

CR-3452-2017

The petitioner is aggrieved by the order dated 11.4.2017 passed by learned Additional Civil Judge (Senior Division), Khadur Sahib vide which the evidence of the petitioner- defendant was closed by order.

The submissions made by Mr.CL Verma, Advocate representing the petitioner have been considered.

The facts extracted from the petition are that plaintiff-respondent No.1 filed a suit for declaration qua the share of Iqbal Singh (since deceased) and claimed that he is co-sharer in

possession of land measuring 84 kanals 1 marla (detailed in the head note of the plaint) as per the jamabandi for the year 2008-09 situated at village Jallalabad, Tehsil Khadoor Sahib. Learned counsel for the petitioner submits that the aforesaid suit was dismissed by learned trial Court under Order XVII Rule 3 of the Code of Civil Procedure (for short 'the CPC') vide judgment and decree dated 9.2.2014, but on an appeal filed by respondent No.1, learned First Appellate Court remanded the case back to the trial Court to decide the same afresh. Respondent No.1- plaintiff took 11 opportunities in concluding his evidence. Thereafter, the evidence of the petitioner started on 25.10.2016 and her two witnesses namely DW1 Parkash Kaur and DW2 Gurpreet Singh stepped into the witness box. Their examination-in-chief was recorded but cross-examination was deferred. They appeared on number of dates but could not be cross-examined on one pretext or the other and ultimately the evidence of the petitioner was closed by order. Submitting that in case the testimonies of the witnesses are left on record un-cross-examined, the defence of the petitioner will be seriously prejudiced, learned counsel prayed that only one opportunity to produce DW1 and DW2 Parkash Kaur and Gurpreet Singh, Clerk of UCO Bank for their cross-examination be given.

Copy of the zimni orders w.e.f. 25.10.2016 have been

annexed with the instant revision petition. Perusal of the same shows that though the petitioner availed quite number of opportunities for leading her evidence, but in the beginning itself her witness DW1 and DW2 appeared on two different dates and their examination-in-chief was recorded and on the mere asking of learned counsel for the plaintiff- respondent No.1 their cross-examination was deferred. They appeared again but their cross-examination was not recorded.

Cross -examination of a witness is to test the veracity of the statement made by him. In case the opposite party is not given a chance to cross-examine the witness his examination-in-chief would also not be read in evidence and that will prejudice the defence of the petitioner. To avoid unnecessary delay in the matter, notice is not being issued to the respondents. In the interest of justice, in my considered opinion, the petitioner- defendant deserves to be given one last opportunity to produce her witnesses i.e. DW1 and DW2 for their cross-examination by respondent No.1-plaintiff. It will cause no prejudice to the rights of the plaintiff. Rather, the evidence recorded in due process of law will help the trial Court to better appreciate the issues involved and render substantial justice to the parties.

Resultantly, order dated 11.4.2017 is set aside and

learned trial Court is directed to grant one opportunity to petitioner

defendant to produce DW1 and DW2 in the witness box for their cross-examination by respondent No.1- plaintiff, which shall be subject to her depositing Rs.3000/- as costs with the District legal Services Authority, Tarn Taran.

However, it is made clear that if the petitioner-defendant fails to produce DW1 and DW2 on the date so fixed by learned trial Court, no further opportunity shall be granted to her for the said purpose.

17.5.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No