

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

CR No.3887 of 2017

Date of decision: 26.05.2017

Krishanjeet Singh

..Petitioner

Versus

Vijay Kumar Godara and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Padamkant Dwivedi, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 15.03.2017 passed by the Civil Judge (Junior Division), Hisar, whereby, evidence of the plaintiff-petitioner has been closed by order.

Briefly, the facts of the case as made out in the present revision petition are that the plaintiff-petitioner filed a suit for declaration to the effect that he is owner in possession of the property in dispute as mentioned in the plaint and the Will registered vide No.288 dated 20.08.2004 allegedly executed by Shri Balbir Singh is null and void ab-initio as said Balbir Singh was not owner of aforesaid property and the will is surrounded by suspicious circumstances and is not binding on the plaintiff. On 04.05.2016, the plaintiff-petitioner produced and examined his witnesses including one Jagdish Ram Verma as PW7 and also submitted his affidavit in examination-in-chief. Thereafter, the case was adjourned to 17.05.2016 for

cross-examination of said witness. Other witnesses were also examined-in-chief but their cross-examination could not be done. Thereafter, vide order dated 15.03.2017, the evidence of the plaintiff-petitioner was closed by Court order on the ground that plaintiff had failed to examine all his witnesses and the case is of the year 2011 and it is in the list of action plan cases. It has also been mentioned therein that there is no reason to adjourn the case further. Said order dated 15.03.2017, whereby, the evidence of the plaintiff-petitioner has been closed, is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the evidence of the plaintiff-petitioner has been closed without his fault. The witnesses of the plaintiff-petitioner were present before the trial Court on each and every date and only on one occasion i.e., 15.03.2017, two witnesses, namely, PW7-Ashok Kumar and PW8-J.R. Verma, could not come present. The trial Court had not even taken into consideration the orders so as to clarify as to which party had delayed the trial. Even on 15.03.2017, three witnesses of the plaintiff-petitioner were present but they were not cross-examined. The defendants were to cross-examine them but their right was waived off. Learned counsel further submits that said two witnesses, namely, Ashok Kumar and J.R. Verma have already been examined-in-chief and partly cross-examined. They were to be cross-examined further by the defendants. Learned counsel also submits that no prejudice would be caused to the other party in case the plaintiff-petitioner is given one effective opportunity for cross-examination of said two witnesses being material witnesses of the case.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

Notice of motion.

Notice on behalf of respondent has been accepted by Mr. Ajay Jain, Advocate, who is present in the Court.

On perusal of *zimni* orders, which are on record, it is clear that on 04.05.2016, the petitioner produced and examined his witnesses including one Jagdish Ram Verma as PW7, who submitted his affidavit in examination-in-chief. Thereafter, the case was adjourned to 17.05.2016 for cross-examination of PWs Ravi Shankar, Registry Clerk and Jagdish Ram Verma and for examination-in-chief of other witnesses. Thereafter, on 17.05.2016, PW7-Jagdish Ram Verma and Ravi Shankar, Registry Clerk were present in the Court but were not examined by defendant-respondents No.10 and 11. Again on 23.05.2016, PW7-Ashok Kr. Sharma, Deed Writer was partly examined-in-chief. Ravi Shankar, Registry Clerk was cross-examined. PW8-J.R. Verma, was also present in the Court but was not examined. The case was adjourned for 07.07.2016, which was declared holiday and the case was taken up on 06.07.2016. Again on 28.07.2016, PW7-J.R. Verma was present and was partly cross-examined and his further cross-examination was deferred because the Court time was over. Thereafter, because of talks of compromise between the parties, the case was adjourned. Again on 19.08.2016, said JR Verma was present but was not cross-examined as a request for adjournment was made by the counsel for the defendants. Even on 05.09.2016 and 07.09.2016, PW2 was present

and partly examined. On subsequent date, i.e., 22.09.2016, PW-8 J.R. Verma was partly examined. On 24.10.2016, 30.11.2016, 19.12.2016, 09.01.2017, 20.01.2017 and 01.02.2017, the case was for consideration of application for permission to lead secondary evidence. On 16.02.2017, PWs Ashok Kumar and J.R. Verma were present but were not cross-examined by the counsel for the defendants.

A perusal of *zimni* orders shows that said witnesses were present. Their examination-in-chief was recorded. They were partly cross-examined but their further cross-examination was deferred on the request of defendants. Said *zimni* orders have not been taken into consideration while passing impugned order dated 15.03.2017 and evidence of the petitioner was closed.

Learned counsel for the petitioner has requested to grant only one effective opportunity to complete his evidence.

On perusal of *zimni* orders, it is clear that the respondent-defendants counsel was granted sufficient opportunities to cross-examine the plaintiff's witnesses but the date was given without passing any harsh order. There is nothing on record to show as to whether any cost was imposed upon the respondents for not cross-examining the plaintiff's witnesses. The trial Court would have cautioned the defendants in case, the cross-examination of plaintiff's witnesses was not conducted. The order of closing the evidence may affect the interest of the parties in the suit.

For the reasons recorded above, the present revision petition deserves to be allowed as cross-examination of the plaintiff's witnesses was not done because of fault of defendants' counsel.

Accordingly, impugned order dated 15.03.2017 is set-aside and the trial Court is directed to give one effective opportunity to the petitioner with the direction to the defendants' counsel to conclude the cross-examination of plaintiff's witnesses. However, it is made clear that in case, the cross-examination of plaintiff's witnesses is not concluded on one date because of fault of the defendants' counsel, the same cannot be considered to be the effective opportunity to the petitioner. The petitioner is also directed to conclude his entire evidence on one effective opportunity. However, the cost of ₹5000/- is imposed upon the petitioner, which shall be deposited with the trial Court.

26.05.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes