

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4926 of 2017 (O&M)

Date of Decision: 22.11.2017

Pardeep Kumar Mehta

.....Petitioner

Versus

Dev Parshad and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Aman Dhir, Advocate
for the petitioner.

ANITA CHAUDHRY, J

The petitioner has assailed the order dated 11.4.2017 (Annexure P-1) vide which he was denied the opportunity to further cross-examine his own witness and the trial Court returned the record while his prayer was for retaining it in the Court. Lastly the discharge of the Panchayat Secretary who had failed to produce the record summoned from him.

On the last date of hearing, the petitioner had been asked to place on record the statement made by Naresh Kumar Sharma PW-5 as well as the zimni orders, those were filed.

Brief resume of facts. The plaintiff had filed a suit against his brothers and other legal heirs seeking partition of the estate left behind by Mansa Ram, his father. He had claimed that he was entitled to a separate share and he was in possession of the property shown in orange colour in the site plan. It was his case that there was a passage measuring 6' ft x 60' ft according to the land scheme of 1991-92 and there was a street used by both

the plaintiff and his brothers and that area would be excluded from partition

as it was common area.

It appears that this fact was disputed and the existence of the street was denied. It was also denied that any street had been constructed by the Gram Panchayat. It was also pleaded that measurement book No. 1 with the BDPO did not relate to this property and the *Aks Latha* was clear.

The plaintiff did not place on record the site plan referred by him in his plaint here. During the proceedings the trial Court directed the plaintiff to get a site plan prepared. As is apparent from the zimni order dated 4.3.2015 that a dispute arose. There is no need to refer to any other fact relating to this as the issue under challenge is different.

The plaintiff had summoned Naresh Kumar Sarpanch with the record. He appeared and stated that he did not have any record and the examination commenced. The plaintiff made a prayer for declaring the witness hostile and sought permission to cross-examine the witness which was allowed and a lengthy cross-examination was effected. The Court during the cross-examination of the witness made an observation that the plaintiff was putting unnecessary questions to the witness which had no connection whatsoever with the dispute raised in the case and he was not closing the cross-examination because he was not getting favourable answers and he was putting irrelevant questions. The cross-examination by the defendant was ordered to be closed and the witness was discharged.

The trial Court also discharged the witness a Record Keeper who brought the record from Dasuya Record Room saying that if need be, that can be summoned later on. There was another witness who was summoned with the record. He made a statement that the record was not

available with him and he too was discharged. The plaintiff is aggrieved by

the closure of his cross-examination and the discharge of two witnesses.

The dispute in the *lis* is with respect to the partition of a property owned by the legal heirs of Mansa Ram. The plaintiff had claimed that there was a street existing which was shown in yellow colour in the site plan filed by the plaintiff. That site plan has not placed on record here. The plaintiff took upon himself to prove that there was a street abutting the house and was in existence since 1991-92 and for that purpose he summoned the Sarpanch with the record. The Sarpanch appeared and made a statement that the record was not in his custody and the plaintiff had sought permission to declare the witness hostile as he was not supporting his stand. The trial Court after giving opportunity to the plaintiff to cross-examine his own witness had closed the cross-examination as it found that unnecessary and frivolous questions were being put to PW-5. A reading thereof does show that the plaintiff had deviated from the context and was cross-examining the witness on matter unrelated to the litigation and further examination was rightly closed. I do not find any infirmity in it.

The petitioner was also aggrieved as the Record Keeper who had brought the record had been discharged. The prayer made by the petitioner was that the record should have been retained. The trial Court had categorically mentioned that if the record was required at a future date, it could be summoned and again there is no illegality. It can be summoned at the later stage if it is required at the time of arguments.

The petitioner is also aggrieved as the Panchayat Secretary Madan Lal was discharged as he was unable to get the record. The petitioner was expected to first place on record some documents to show that some

record existed with respect to the street and only then he could summon the

relevant official with the record. It appears that till date the petitioner had not filed any document to show that the street was a public street or was being maintained by them. The witness who is present in the Court had to be discharged and there is no illegality.

Whenever an official is transferred charge report is prepared and list of documents are handed over to the next incumbent. The plaintiff can retrieve that information or seeks it by other means. The fears of the plaintiff are misplaced.

I find no illegality in the order.

The petition is dismissed in *limine*.

(ANITA CHAUDHRY)
JUDGE

November 22, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No