

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5436 of 2016 (O&M)
Date of Order: 05.12.2017

Manjit Singh and another

..Petitioners

Versus

Balvir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Pallavi Singh, Advocate and
Mr. Chetan Bansal, Advocate,
for the petitioners.

Mr. Sarju Puri, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendants-petitioners are in revision petition against order dated 02.08.2016, declining the prayer of the petitioners to recall plaintiff in the witness box for further cross-examination.

Plaintiff had filed a suit for specific performance of agreement to sell dated 27.06.2011. Defendants contested the suit. During the pendency of the suit, defendants filed an application for permission to amend the written statement so as to plead that plaintiff had earlier also forged an agreement to sell dated 22.12.2009 with respect to the same land between the same parties.

The application for amendment was allowed on 11.04.2016. Consequently, amended written statement was filed. Plaintiff had been examined before the amendment was allowed. After filing the amended written statement, the Court did not frame any additional issue.

Defendants-petitioners filed an application that plaintiff be re-

called for further cross-examination on the ground that subsequent discovered fact i.e., agreement to sell dated 22.12.2009 is required to be put to the plaintiff and he is required to be confronted with the aforesaid alleged agreement to sell. The aforesaid application was dismissed by the Court.

I have heard counsel for the parties at length and with their able assistance gone through the documents filed in the paper book.

It is not in dispute that application for amendment of the written statement was allowed on 11.04.2016. Defendants were permitted to amend the written statement and plead another agreement to sell dated 22.12.2009 with respect to the same land between the same parties. Before the amendment was allowed, plaintiff had been examined and cross-examined. Defendants filed an application seeking opportunity to further cross-examination of the plaintiff with respect to the subsequent discovered fact i.e. agreement to sell dated 22.12.2009.

Order 18 Rule 17 of the Code of Civil Procedure enables the Court to re-call any witness who has been examined and may put such question to him as the Court may think fit.

Even otherwise, if there is no statutory provision, the Court has power to invoke Section 151 CPC to meet with a particular situation. Here is a case where the subsequent agreement to sell has been allowed to be pleaded by way of amendment. The agreement to sell is with respect to the same land between the same parties.

Plaintiff is required to be confronted with the aforesaid agreement to sell. However, since the plaintiff has already been examined, therefore, only remedy left is to re-call the plaintiff.

Taking into consideration the aforesaid facts, the application filed by the defendant is allowed and the impugned order is set aside.

Defendants would be given opportunity to cross-examine the plaintiff further with respect to subsequent discovered fact i.e. the agreement to sell dated 22.12.2009.

Plaintiff is directed to make himself available before the trial Court on the next date of hearing i.e. 20.12.2017, so that counsel for the defendants is able to cross-examine him.

December 05, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No