

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5124 of 2017(O&M)
Date of Decision: 29.8.2017

Akshay Yadav

---Petitioner

versus

Ram Dhan and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Aditya Singh Yadav, Advocate
for the petitioner**

Rekha Mittal, J.

CM No. 17211-CII of 2017

Heard.

Allowed as prayed for.

Annexures P4 to P6 are taken on record subject to just exceptions

CR No. 5124 of 2017

The present petition directs challenge against order dated 10.7.2017 (Annexure P-3) passed by the Civil Judge (Senior Division), Gurugram whereby application filed by the plaintiff/respondent No. 1 for disallowing the petitioner/defendant No. 2 to cross examine respondent No. 2/defendant No. 1 was allowed.

Counsel for the petitioner/defendant No. 2 has submitted that in the written statement filed by the petitioner, by way of preliminary objection

No. 4, it was specifically pleaded that suit of the plaintiff is the result of collusion between the plaintiff and defendant No. 1 and the petitioner is a bona fide purchaser of the suit property, therefore, the petitioner has every right to cross examine defendant No. 1. It is further submitted that the trial court has wrongly held that there is no clash of interests between the defendants or in case of any conflict of interest, the petitioner was supposed to cross examine defendant No. 1 before he was cross examined by the plaintiff. It is further argued that a serious prejudice shall be caused to the petitioner in case he is not permitted to cross examine defendant No. 1 in the light of averments raised in para 4 of the preliminary objections.

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

Ram Dhan, respondent No. 1/plaintiff has filed a suit for declaration with consequential relief of permanent injunction assailing general power of attorney purported to be executed by him in favour of Anil Yadav respondent No. 2/defendant No. 1 on the basis whereof Anil Yadav has executed sale deed of the suit property in favour of the present petitioner.

Perusal of the written statement filed by Anil Yadav, defendant No. 1 would make it evident that he has controverted allegations of the plaint, reiterated that the power of attorney was executed by the plaintiff in his favour on the basis whereof he has executed a sale deed in favour of the present petitioner. He has further pleaded that an agreement to sell dated 28.11.2003 and Will dated 28.11.2003 pertaining to the suit land was executed by the plaintiff in his favour. Defendant No. 1 appeared in the witness box and his examination and cross examination by the plaintiff was

completed and at that stage, the instant application was filed by the plaintiff that the petitioner/defendant No. 2 cannot be allowed to cross examine defendant No. 1 by relying upon judgment of this Court **Mohinder Singh Gill vs. Jagdeep Singh and others 2013(1) R.C.R.(Civil) 569**. In para 4 of the application, the plaintiff/respondent No. 1 has averred, extracted hereinbelow:-

“That it is respectfully submitted that so far as the plaintiff knows, the defendant No. 1 has stated nothing against the defendant No. 1 and thus the defendant No. 2 is not entitled to cross examine the defendant No. 1, in view of citation given below:-

2013(1) R.C.R.(Civil) 569 (P&H), “Mohinder Singh Gill vs. Jagdeep Singh and others” Photostat copy is attached herewith.”

The present petitioner filed reply to the application (Annexure P-2) and reiterated his stand qua preliminary objection No. 4 in the written statement. However, there is no challenge to the allegations raised in the application that defendant No. 1 has stated nothing against defendant No. 2 and thus defendant No. 2 is not entitled to cross examine defendant No. 1. Once the petitioner has not raised an issue before the trial court by controverting allegations raised in para 4 of the application, he cannot be allowed to make submissions before this Court that defendant No. 1 has brought certain contradictions in his cross examination by the plaintiff. It was for the trial court to appreciate this aspect of the matter had the petitioner raised such an issue before the court concerned. This Court, in exercise of its revisional jurisdiction, would not appreciate evidence of

defendant No. 1 and comment thereon for the purpose sought to be achieved by the petitioner. In this view of the matter, I do not find any error much less illegality in the impugned order passed by relying upon judgment of this Court **Mohinder Singh Gill's case (supra)**.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

29.8.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No