

In the High Court of Punjab and Haryana at Chandigarh

CR No. 5872 of 2016

Date of Decision: 30.11.2017

Surinder Kaur

---Petitioner

versus

Inderjit Singh Bawa and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rakesh Gupta, Advocate
for the petitioner**

**Mr. Sourabh Goel, Advocate,
for respondent Nos. 1 to 4**

Rekha Mittal, J.

The present petition directs challenge against order dated 12.8.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioner to declare Prem Babbar DW4 as a hostile witness and allow the applicant-defendant to cross examine him, has been dismissed.

Counsel for the petitioner has submitted that respondent Nos. 1 to 4/plaintiffs have filed suit for declaration that Will dated 11.7.2006 registered on the same date is non entity and not binding qua rights of the plaintiffs. The petitioner/defendant relied upon registered Will dated 11.7.2006. She examined Prem Babber Lambardar DW4, an attesting witness to the Will in question. He (Prem Babber) tendered into evidence his affidavit Ex. DD (Annexure P-4) by way of examination-in-chief. The

witness was partly cross examined by the contesting party in the fore noon session. When he tendered himself for his further cross examination in the afternoon session, he took a complete somersault and denied execution of the Will by Gurdial Singh, its testator. It is argued with vehemence that in view of the facts elicited in cross examination of Prem Babber conducted in afternoon session on 1.8.2016, he is required to be declared as a hostile witness with liberty to the petitioner to put him questions in the form of cross examination.

Counsel representing the respondents/plaintiffs has supported the impugned order with the submission that the trial court has rightly held that cross examination is the most powerful and effective instrument for bringing out and testing truth. If a witness is declared hostile because his testimony does not support cause of the party calling him such a view would seriously undermine the independence, integrity and dignity of a witness in a court of law. In support of his contention, he has referred to judgment of this Court **Gram Panchayat vs. Shakuntala Devi, 2015(8) RCR (Civil) 230**. Reference has also been made to judgment of Hon'ble the Supreme Court of India **State of Bihar vs. Lalu Prasad alias Lalu Prasad Yadav 2002(4) RCR (Criminal) 508**.

I have heard counsel for the parties and perused the paper book particularly various annexures appended with the petition.

Prem Babber tendered into evidence his affidavit Ex. DD by way of examination in chief. A relevant extract therefrom reads as follows:-

“This Will was scribed by Shri Satinder Singh, Deed Writer at the instructions of Shri Gurdial Singh. After scribing the same

it was read over and explained to Shri Gurdial Singh in the presence of the deponent and the other witness Shr. Harbhajan Singh, resident of B-VII-855/1, Lakkar Bazar, Ludhiana. Shri Gurdial Singh after admitting the contents of the Will as correct has signed and thumb marked the Will in the presence of the deponent and the other witnesses as well as in the presence of the Deed Writer. Thereafter the deponent and Shri Harbhajan Singh have signed upon the Will being attesting witnesses thereto in the presence of each other as well as in the presence of Shri Gurdial Singh and the scribe of the Will. Thereafter the scribe has affixed his stamp and signed upon the Will being scribed by him. The Deed Writer has also made entry of this Will in his Register kept and maintained by him in due course of his work. In the relevant entry of the register of the Deed Writer Shri Gurdial Singh thumb marked and signed whereas the deponent and the other witness have also signed.

2. Thereafter we all appeared before the Sub-Registrar for registration of the Will. The Sub-Registrar enquired about the due execution of this Will to which Shri Gurdial Singh admitted it correct and thereafter Shri Gurdial Singh thumb marked and signed upon the endorsement of the Will in the presence of the deponent and other witness. Thereafter the deponent and the other witness have also signed upon the endorsement of the Will in the presence of each other as well as in the presence of Shri Gurdial Singh before the Sub-Registrar Our photograph

was also taken through the computer process at the time of registration of the Will.”

In his cross examination, in the post lunch session, he has deposed to the following effect:-

“I reached Satinder Singh (seat of) Kohli Seat at 10.30 a.m. Gurdial Singh was already present there. Gurdial Singh was accompanied by 2/3 persons. I cannot tell the name of any other person who were accompanied Gurdial Singh at that time. The Will in question was already lying typed when I reached there. Two copies of Will typed lying. No body signed the Will in my presence. The Will was already lying signed. Even the signature on the register of Satinder Singh Kohli were present. I do not know if Gurdial Singh was not verse with Punjabi language. I do not know if Gurdial Singh neither read or write Punjabi. The Will was lying typed in Punjabi language. I have never met Gurdial Singh thereafter. I do not remember the name of Sub Registrar. I do not know as on that day, Gurdial Singh was of sound disposing state of mind or not on that day. I have not seen the original Will during the present court proceedings except summoned record. I cannot recognize the signature of Gurdial Singh.”

The question for consideration is whether from the above extracted cross examination of Prem Babber, can it be said that what has

been deposed by Prem Babber is the result of art of cross examination of an experienced lawyer, to deny the plea of the petitioner. A casual reading of examination in chief of Prem Babber by way of affidavit Ex. DD and the aforesaid extract from his cross examination leaves no manner of doubt that the witness completely changed his stance and took somersault when he was cross examined in post lunch session. However, it is not clear if cross examination of the witness, at the behest of the respondents/plaintiffs, had been completed by the time counsel for the petitioner made a request for declaring him hostile and permitting him to put questions in the form of cross examination.

There is no dispute that practice of allowing a witness to be treated as hostile is always done in extraordinary circumstances. The present is a case where the witness for the reasons best known altogether changed his stance with regard to the Will in question. In view of the peculiar facts and circumstances, reasoning adopted by the trial court for declining prayer of the petitioner is not tenable and liable to be set aside. The respondents/plaintiffs cannot derive advantage to their contention from the referred authority in ***Gram Panchayat's case (supra)*** wherein there was some difference in the stand of the witness in chief examination viz-a-viz his cross examination with regard to level of *pucca gohri*. The judgment of Hon'ble the Supreme court in ***State of Bihar's case (supra)*** was rendered in different context wherein the witness turned hostile in his examination in chief and the public prosecutor did not seek permission to cross examine him at that stage but sought to cross examine him when cross examination by defence was over. As has been noticed hereinbefore, the witness

supported cause of the petitioner to the hilt in his chief examination but later took a complete turn in his cross examination in the post lunch session. In the given circumstances, it is a fit case where the witness can be declared hostile with an opportunity to the petitioner to ask him questions in the form of cross examination. However, it is clarified that after the witness is cross examined by the petitioner, the respondents/plaintiffs will get further opportunity to cross examine him.

With the aforesaid observations, the petition stands disposed of.

(Rekha Mittal)
Judge

30.11.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No