

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

Civil Revision No.5623 of 2017(O&M)

Date of Decision: August 23, 2017

Nishan Singh

...Petitioner

versus

Gurmej Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Vikas Gupta, Advocate
for the petitioner.

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HARINDER SINGH SIDHU, J.

This revision petition has been filed impugning the order dated 20.07.2017, whereby, the learned Trial Court has dismissed the application of the plaintiff-petitioner for leading additional evidence by producing Nishan Singh (petitioner) legatee of Will dated 07.03.2009.

The petitioner filed suit for declaration to the effect that the plaintiff-petitioner and defendants No.2 to 7 are owners in possession of suit land with consequential relief of permanent injunction restraining defendant No.1 from alienating the suit land. After filing of the written statement, the issues were framed on 02.02.2015 and the matter was fixed for plaintiffs' evidence. The plaintiffs closed their evidence on 05.11.2016 and the case was fixed for defendants' evidence. Examination-in-chief of three witnesses of the defendants was recorded, but their cross-examination was deferred on request.

The petitioner filed application on 20.04.2017 for leading

additional evidence for producing himself, legatee of the Will executed by Didar Singh in favour of the petitioner and Jagmeet Singh sons of Gurbhagat Singh, in equal shares. The said application has been dismissed by the impugned order. Ld. Trial Court while dismissing the application noted that the plaintiffs had led their evidence and after obtaining number of opportunities closed the same on 05.11.2016. The defendants had examined three witnesses and instead of their cross-examination, the application has been filed only to delay the disposal of the case.

Learned counsel for the petitioner admits that mistakenly the evidence on behalf of the plaintiffs was closed without examining Nishan Singh. He states that the Will dated 03.07.2009 in favour of the petitioner/plaintiff Nishan Singh is set up in the suit and validity of the Will has to be established by examining Nishan Singh, which evidence is very necessary and material for just decision of the civil suit on merits. In case, he is not permitted to be examined, grave prejudice would be caused to the petitioner.

I have heard learned counsel for the petitioner and have gone through the impugned order.

It is not denied that the petitioner had availed sufficient opportunities for leading evidence. The petitioner concedes that it was by inadvertence that the plaintiffs' evidence was closed without examining the plaintiff-petitioner, who is the legatee of the Will, on which the claim of the petitioner in the civil suit rests.

Undeniably, the examination of the petitioner is necessary for a just and fair decision of the suit. The end of justice would be met if the

petitioner is given one effective opportunity to examine himself as a witness.

Hence, this revision petition is allowed. The impugned order dated 20.07.2017 is set aside. The Trial Court is directed to grant one effective opportunity to the petitioner to examine himself as a witness. This shall be subject to a payment of costs of Rs.3,000/-, each, to respondents No.1, 2, 3, 4, 5 and 30, who are the contesting respondents in this case.

The present petition is disposed of without issuing notice to the respondents as that may not only delay the proceedings but also burden them with unnecessary expenditure. However, if the respondents feel aggrieved of this order, they are at liberty to file an application recalling the same.

August 23, 2017
Atul

(HARINDER SINGH SIDHU)
JUDGE

<i>Whether speaking/ reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>