

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

Civil Revision No.5788 of 2017

Date of decision: 29.08.2017

Jasvir Kaur

...Petitioner

vs.

Ind Kaur (now deceased through LR) and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Sunny K. Singla, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

This revision petition has been filed praying for setting aside the order dated 12.01.2017 of Civil Judge (Junior Division), Malerkotla (Annexure P-3), whereby, it was ordered that PW-2 Pritam Singh has been examined completely and matter was posted for evidence of remaining witnesses of the plaintiff-respondent No.1.

Respondent No.1 filed a suit for declaration that she is owner in possession of house measuring 2 biswas. She further prayed for declaration that the agreement dated 01.10.1999 allegedly executed by her in favour of respondent No.2 is null and void. Further declaration was also sought that the agreement to sell dated 07.04.2010 executed by respondent No.2 in favour of respondent No.3 be also declared null and void.

The petitioner was impleaded as defendant no.3 in the suit. In the written statement filed by defendant no.2, it had been stated that the house in dispute had been sold to the petitioner and possession thereof had

also been delivered. The petitioner appeared and filed written statement. In order to prove her case, respondent No.1 examined PW-1 Darshan Dass, PW-2 Pritam Singh, PW-3 Jarnail Singh (legal representative of Ind Kaur, respondent No.1), PW-4 Darshan Dass and PW-5 Sajid Jamil.

Learned counsel for the petitioner contends that on 16.12.2016 PW-2 Pritam Singh tendered his affidavit in evidence and his cross-examination was deferred on the request of learned counsel for the defendants. On 12.01.2017, PW-2 Pritam Singh was cross-examined by counsel for defendant no.1 as also by counsel for defendant no.2, whereas the counsel for defendant no.3-petitioner did not opt for cross-examination. Hence, it was recorded in the order dated 12.01.2017 that the opportunity had already been given to defendant no.3-petitioner and the cross examination of PW-2 Pritam Singh was 'NIL'. Learned counsel states that the petitioner had never instructed her counsel not to cross examine PW-2. The fact of non-cross examination of PW2 came to her knowledge when she engaged another counsel, who inspected the record and appraised her about non conducting of the cross examination of PW-2.

Learned counsel for the petitioner further states that the cross-examination of PW-2 is very essential and necessary for proper adjudication of the case.

Considering the aforesaid facts and circumstances and also that a party may not be made to suffer on account of any negligence of counsel, I am of the view that it would be in the interest of justice, if one opportunity is given to the petitioner for cross-examination of PW-2.

Consequently, the revision petition is allowed. The order dated

12.01.2017 (Annexure P-3) is set aside. Learned trial court is requested to give one opportunity to defendant no.3-petitioner for conducting cross-examination of PW-2 Pritam Singh. This shall be subject to payment of Rs.10,000/- as compensatory costs to respondent No.1.

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 for recalling the same.

August 29 , 2017

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(HARINDER SINGH SIDHU)
JUDGE

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