

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

CR No.6257 of 2015

Date of Decision: 24.10.2017

Daya Ram

...Petitioner

Versus

Rita and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Ajay Jain, Advocate
for the petitioner.

Mr. B.K. Bagri, Advocate
for respondents No.11 and 12.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 01.09.2015 passed by Civil Judge (Junior Division), Narnaul whereby examination of plaintiff was denied and the case was fixed for remaining evidence of the plaintiff.

[2]. Plaintiff/petitioner filed a suit for declaration to the effect that he is owner in possession of the land to the extent of defined share, out of total land measuring 101 kanals 09 marlas situated in the revenue estate of village Ranta Kalan, Tehsil Narnal and the partition proceedings decided on 12.01.2007 by the Assistant Collector 2nd Grade and consequent mutation are illegal, null and void. The sale deed dated 26.03.2013 executed

by defendants No.2 and 3 in respect of 6 kanals, 4 marlas of land in favour of defendant No.1 is also claimed to be illegal.

[3]. Issues were framed on 18.04.2015 and the evidence of the plaintiff started w.e.f 15.05.2015. Plaintiff examined Raja Ram, Record Keeper as PW 1 and Ravi Shankar Bhardwaj, Deed Writer as PW 2. The case was adjourned to 17.07.2015 for remaining evidence of the plaintiff. On 17.07.2015, plaintiff examined two more witnesses namely Sarjit Singh, Clerk Record Room as PW 3 and Ram Avtar Yadav, Advocate as PW 4. The case was adjourned to 01.09.2015 for remaining evidence of the plaintiff. Plaintiff wanted to examine himself. An objection was raised by the defendants that four witnesses have already been examined by the plaintiff and at this stage, plaintiff cannot be examined. Learned counsel for the defendants relied upon **CR No.3595 of 2014** titled **Jasvir Singh and another Vs. Jaspal Singh** decided on 30.03.2015.

[4]. Trial Court vide order dated 01.09.2015, disallowed the plaintiff to be examined himself. The decision in CR No.3595 of 2014 was made on 30.03.2015 and the same came to the notice of learned counsel for the plaintiff on August, 2015 as the same was published in August addition. The provision in terms of Order 18 Rule 3A CPC was taken to be on serious note by the High Court and it was ruled that in future if any party does

not offer his or her evidence first and brings third party witness ahead of him or her without leave of the Court, then opposite party may oppose such evidence rather the plaintiff to be led. Leave of the Court is *sine quo non* for such an indulgence. The Court while dealing with **Jasvir Singh's case (supra)** noticed that the provision requiring the parties to be examined first was inserted by Act 104 of 1976 for a salutary purpose of bring the assertion of the respective parties first before other witnesses could be brought and to ensure that a party does not cover up every lacuna in evidence of what are brought through witnesses in cross examination. The Court held that any breach of rule will be viewed seriously and may result in eschewing the evidence of the parties, if no permission is taken under Order 18 Rule 3A of the Code to examine the party after examination of witnesses. It was also observed that the trial Court shall not permit evidence to be led, unless it sets out reason in writing why such permission is being given.

[5]. Trial Court while rejecting the prayer of the plaintiff held that no list of witnesses has been filed by the plaintiff and in no manner, the defendant had the opportunity to know that the plaintiff would be examined at any point of time in future. Trial Court also observed that the decision dated 30.03.2015 rendered in CR Nos.3595 and 8375 of 2014 was circulated in

Courts and the plaintiff examined witnesses thereafter.

[6]. In **The Amirtsar Improvement Trust Vs. Ishri Devi, 1979 PLJ 234**, the provision in terms of Order 18 Rule 3A CPC was held to be directory. A procedural rule has to be liberally construed. The interpretation of the procedural rule should not be so strict that it may tend to triumph over justice. The procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. The provision was held to be directory in nature. The Court is not deduced of jurisdiction to grant permission by recording reasons for granting the same. In appropriate cases, the Court can accord permission to a party at a later stage even though he may not have done so at the very commencement of his evidence. Procedure is the handmaid of justice and not its mistress. It is meant to advance cause of justice and not to obstruct the same. The procedural law has to be construed liberally and it should not be allowed to triumph over the cause of justice. The strict construction of Rule 3-A may result in hardship to a party as it may result in stifling of the material evidence of a party even if for adequate reasons, which may be beyond his control. The view expressed in **The Amirtsar Improvement Trust Vs. Ishri Devi's case (supra)** was further relied by Co-ordinate Bench of this Court in **CR No.2385 of 2014** titled **Jaspal Kaur Dhillon Vs. Bittu @**

Kulwinder Singh and another decided on 30.01.2015.

[6]. In the instant case, trial Court has relied upon **Jasvir Singh's case (supra)**. The said case was decided on 30.03.2015 and thereafter, as per case of the petitioner, the judgment came to be published in the month of August, 2015 only whereas stand of the respondents was that the judgment was circulated. In essence, the provision under Order 18 Rule 3A CPC being procedural in nature cannot be held to be mandatory. Even if, the word used has given an impression of its being a mandatory in nature, the provision was explained by Full Bench of this Court in case of **The Amritsar Improvement Trust Vs. Ishri Devi's case (supra)**. The said judgment was not relied by any of the party in **Jasvir Singh's case (supra)**. The present case is a marginal case. On acquiring knowledge about the decision rendered in **Jaspal Kaur Dhillon's case (supra)** even if the principle is to be applied in the facts and circumstances of the present case, the leave of the Court is a condition precedent for granting indulgence to the plaintiff for his or her examination after examination of other witnesses at prior point of time.

[7]. In the light of aforesaid precedents, I deem it appropriate to allow the plaintiff to lead his evidence by appearing himself. Trial Court shall grant him permission for

deposing as his own witness and thereafter, proceed to decide the suit in accordance with law.

[8]. Disposed of.

24.10.2017
prince
Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No