

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

Civil Revision No.6475 of 2016
Date of decision: August 29, 2017

Ekambir Singh and another		Petitioners
	Versus	
Bant Singh and others		Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Binderjit Singh, Advocate for the petitioners.

Mr. A.S. Salar, Advocate for respondents No.1, 2, 4 and 5.

HARINDER SINGH SIDHU, J.

This present civil revision has been filed impugning the order dated 19.01.2016 (Annexure P-9) vide which the evidence of the plaintiffs-petitioners has been closed by the order of the Court as also the order dated 08.08.2016 whereby, application dated 20.01.2016 filed by the petitioners for recalling that order has been dismissed.

The petitioners being minors have filed this petition through their natural guardian, Mandeep Kaur (mother). The petitioners are the grandchildren of Bant Singh-defendant/respondent No.1 and respondents No.2, 3 and 5 are real uncles of the petitioners.

Petitioners have filed a suit for declaration to the effect that they and respondents No.1 to 3 are co-owners, co-sharers and are in joint possession of the suit land and further declaration to the effect that gift deed dated 29.03.2010 executed by respondent No.1 in favour of respondent No.2 as also the gift deed dated 16.08.2010 executed by respondent No.1 in favour of respondent No.3 and the mutations sanctioned on the basis thereof are wrong, illegal, null and void.

The marriage between Charanpreet Singh, father of the

plaintiffs – petitioners and Mandeep Kaur, their mother, was solemnized on 21.3.1999. Petitioner No.2 Simranjit Kaur was born on 28.10.2000 and petitioner No.1 on 21.10.2001. Their father died on 06.12.2002. After the death of their father, a dispute arose in the family and the matter was even reported to the police. With the intervention of the respectables, a settlement dated 28.4.2010 was arrived at between the parties as per which, respondent No.1 Bant Singh undertook to give the due share of the property to the plaintiffs – petitioners. The original copy of the settlement was retained by him. However, he resiled from his undertaking and executed gift-deeds dated 29.3.2010 and 16.8.2010 in favour of respondents No.2 to 5, leading to the petitioners filing the suit for declaration and permanent injunction on 28.6.2011.

On 6.3.2014, affidavits on behalf of PWs Kaka Singh and Kuldeep Singh were filed. On 6.8.2014, affidavit of Mandeep Kaur, mother of the petitioners, was got attested and placed on the judicial file. An application filed by the petitioners seeking directions to Bant Singh, respondent No.1 to produce the original of the settlement dated 28.4.2010 was disposed of vide order dated 3.10.2015 with the observations that the petitioners were at liberty to lead secondary evidence of the mutual settlement, subject to proof of the custody of the original with respondent No.1. Thereafter, the case was adjourned to 16.11.2015 for evidence of the petitioners. On 16.11.2015, the case was adjourned to 19.1.2016. However, the date was wrongly noted by the counsel for the petitioners as 20.1.2016. Due to the non-appearance of the petitioners on 19.1.2016, their evidence was closed by order and the case was adjourned to 15.2.2016 for

evidence of the defendants. In the impugned order dated 19.1.2016, it was recorded that petitioners have been given number of opportunities, but had failed to conclude their evidence and that there was no justification to adjourn the case further for evidence of the petitioners.

Learned counsel for the petitioners contended that their failure to lead evidence on 19.01.2016 was due to some misunderstanding regarding the date of hearing. Their counsel had wrongly noted the date as 20.1.2016. This fact has been disputed by learned counsel for the respondents.

Be that as it may, and without going to this aspect, considering the fact that the petitioners are minors and learned counsel for the petitioners states that only evidence of PW-1 has to be recorded, which is stated to be material for just decision of the case, it would be in the interest of justice to grant one opportunity to the petitioners to tender the evidence of Mandeep Kaur, mother of the petitioners.

Accordingly, this civil revision is allowed. The impugned orders dated 19.01.2016 and 08.08.2016 are set aside. The Trial Court is requested to grant one effective opportunity to the petitioners to tender the evidence of Mandeep Kaur.

No costs.

August 29 , 2017

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(HARINDER SINGH SIDHU)
JUDGE

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