

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

**CR No.6951 of 2016 (O&M).
Date of Decision: 26.04.2017.**

Iqbal Singh

....Petitioner.

VERSUS

Balbir Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Parvinder Singh, Advocate for the petitioner.

Mr. Munish Gupta, Advocate for respondent No.3.

SNEH PRASHAR, J.

Challenge in this petition is to the order dated 20.07.2016 passed by learned Additional Civil Judge (Senior Division), Garhshankar declining the request of petitioner-defendant No.1 to allow him to cross examine the witnesses of respondent No.1-plaintiff Balbir Singh (hereinafter referred to as 'the plaintiff') after the witnesses had been cross examined by respondents No.2 and 3-defendants No.3 and 4 Gurbachan Kaur and Surjeet Kaur (hereinafter referred to as 'defendants No.3 and 4').

The submissions made by Mr. Parvinder Singh, learned counsel representing the petitioner and Mr. Munish Gupta, learned counsel representing respondent No.3 have been heard.

At the very outset, learned counsel for the petitioner argued that the plaintiff has filed the instant suit in collusion with defendants No.3

and 4 who are none other but mother and sister of the plaintiff. By way of

the suit, the plaintiff claimed a declaration to the effect that he is owner in possession of the suit property on the basis of a registered will dated 11.07.1990 allegedly executed by his father Pritam Singh in his favour. He challenged the will dated 03.03.2003 subsequently executed by deceased Pritam Singh in favour of his grandsons (petitioner Iqbal Singh and his brother Harnek Singh-defendants No.3 and 4) as false and fabricated. In para No.5 of their written statement, while replying parawise, defendants No.3 and 4 pleaded that Mutation No.12580 sanctioned in favour of the petitioner and his brother Harnek Singh (defendants No.1 and 2 in the suit) is liable to be set aside. By stating so, defendants No.3 and 4 supported the claim of the plaintiff who had also made a similar prayer. Thus, the pleadings of defendants No.3 and 4 clearly indicate that they were in collusion with the plaintiff. In such circumstances, it is they who should be directed to first cross examine the witnesses of the plaintiff and subsequent to them the opportunity to cross examine the witnesses should be accorded to the petitioner. If the evidence is not recorded in that manner, the case of the petitioner would be prejudiced seriously as he would be made to disclose his evidence before cross examination of the witnesses by defendants No.3 and 4 and in case he is able to extract something favourable to him from the witnesses, defendants No.3 and 4 will cover up the same during cross-examination by them to favour the plaintiff. To support his argument, learned counsel relied upon **Suresh Maruti Korke & Ors. vs. Sau, Latabai Sharad Lipane & Ors., 2009(3) AIR Bom.R 786.**

The argument of learned counsel for the petitioner has been strongly controverted by learned counsel for the respondent. He pointed out

No.3 and 4, the petitioner is trying to allege that there is collusion between the plaintiff and defendants No.3 and 4 whereas the fact is that defendants No.3 and 4 are being deprived of their right in the property by the plaintiff and defendants No.1 and 2 as they both have set up two separate wills, one allegedly in favour of the plaintiff and the other alleged to be in favour of defendants No.1 and 2. Defendants No.3 and 4, widow and daughter of the deceased in their written statement have denied execution of both the wills and their case is that the property of deceased Pritam Singh should devolve on all the legal heirs by way of natural succession. Therefore, learned counsel contended that the question of defendants No.3 and 4 being in collusion with the plaintiff does not arise, rather it is the plaintiff who in collusion with defendants No.1 and 2 intends to grab the shares of defendants No.3 and 4. Learned counsel also submitted that a separate suit regarding inheritance of deceased Pritam Singh claiming right in the property on the basis of natural succession has been filed by defendants No.3 and 4 and the said suit is pending before the same Court.

The facts of **Suresh Maruti Korke & Ors.**'s case (supra) are completely distinguishable from the facts in hand. Though there are two sets of defendants but it is not the case that one set of defendants is supporting the case of the plaintiff. The petitioner, indeed, picking up one sentence from the written statement of defendants No.3 and 4 is trying to build up a case of collusion between the plaintiff and defendants No.3 and 4 whereas the factual position comes out to be different when the written statement of defendants No.3 and 4 is read as a whole. Defendants No.3 and 4 have prayed for setting aside Mutation No.12580 sanctioned in favour of defendants No.1 and 2 being wrongly sanctioned and in the very next

sentence have pleaded that a mutation is liable to be sanctioned as per “intestate natural succession”. They have denied execution of any will by deceased Pritam Singh and have pleaded that they have already filed a separate suit relating to inheritance of Pritam Singh and Gurmel Singh son of Pritam Singh who died unmarried and issue-less and his sole class-I natural legal heir is his mother-Gurbachan Kaur (defendant No.3). In that manner, the case set up by defendants No.3 and 4 is completely distinct from the case of the plaintiff as well as defendants No.1 and 2. In view of said facts, it would be wrong to assume at this stage that there is any collusion between the plaintiff and defendants No.3 and 4 and accordingly learned trial court has rightly directed the petitioner and his brother (defendants No.1 and 2) to cross examine the plaintiff and his witnesses first and has allowed defendants No.3 and 4 to cross-examine them thereafter.

Thus, finding no illegality or perversity in the impugned order and there being no merit in the petition, it is hereby dismissed.

Since the main petition itself has been dismissed, all the accompanying applications are accordingly disposed of.

(SNEH PRASHAR)
JUDGE

26.04.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**