

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

CR No. 7307 of 2017 (O&M)
Date of Decision: December 06, 2017

Tarlok and another

...Appellants

Versus

Malkit Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Sharma, Advocate
for the petitioners.

ANITA CHAUDHRY, J.

CM-25535-CII-2017

For the reasons set out in the application, same is allowed as prayed for and accompanying document Annexure P-4 (Colly) is allowed to be taken on record.

MAIN CASE

The petitioners have challenged the order dated 13.09.2017 (Annexure P-3) vide which their evidence had been closed by the Court.

The backdrop of the case is necessary. A suit for declaration has been filed by the plaintiffs with respect to land measuring 10 Biswas. The land was earlier shown in the name of Sucha Singh father of the petitioners to the extent of half share and a mutation was sanctioned in favour of defendants. The plaintiffs laid a challenge to the entry made in the revenue record.

The suit was filed in March 2014. The evidence of the defendants had started in March 2017. Defendants no.3 to 11 were proceeded *ex parte* and only defendants no.1 & 2 were contesting the suit. The case was adjourned for evidence of the defendants for the first time in October 2016. The Court has closed the evidence of the defendants on 13.09.2017 (Annexure P-3). Defendants no.1 & 2 are aggrieved with the order.

I have heard the counsel for the petitioners. He has taken me through the zimni orders and prays that they may be given an opportunity to present Jagdish DW-1 for his complete cross-examination. The counsel submits that no doubt the defendants had been granted a number of adjournments but on the date fixed for the presence of Jagdish the counsel fell ill and an application had been given for adjournment and the Court was also orally apprised about the inability of petitioner no.2 to appear in the Court and they also wanted to examine a Patwari but the Court has declined their request. It was urged that the Court had also wrongly imposed cost upon them and one opportunity be given to summon the Patwari and examine the witnesses.

A perusal of the zimni orders show that the case had been fixed for evidence of the defendants for the first time in October 2016. No witness had appeared for the first five dates and the defendants did not step into the witness box even after there was an order of last opportunity. The trial Court imposed a cost of Rs.500/- on 09.03.2017, which was not paid on the next date and still the trial Court

accommodated and adjourned the matter to 29.03.2017, which was the 9th opportunity. One of the defendants appeared and tendered his affidavit and he was bound down for his cross examination and on the adjourned date he failed to appear. Jagdish had put in appearance on 03.05.2017 but on that day the counsel for the plaintiff had not come and the case was adjourned to 11.05.2017. The zimni order of 11.05.2017 has not been placed on record. The subsequent orders made available by the petitioners show that Jagdish did not appear thereafter and DW-2 Jora Singh appeared and he was partly examined and the case was adjourned for cross-examination but he too absented on 05.07.2017 and did not appear thereafter. The zimni order of 26.07.2017 shows that Jagdish DW1 appeared and was partly cross-examined. The counsel had explained that his statement was not completed as he was asked to get some documents. The zimni orders show that he did not appear thereafter and the case was adjourned four times and the evidence was closed. The trial Court has adjourned the case 23 times to enable the defendants to lead their evidence. The Court could not have given more than 3 opportunities. It appears that the defendants were only wanting to delay the trial. They did not even pay the cost on time. I find no infirmity in the order passed by the Court below.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

December 06, 2017

sunil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No