

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7742 of 2016 (O&M)

Date of decision: 30.03.2017

Jarnail Kaur

... Petitioner

Vs.

Gurdial Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. H.R. Bhardwaj, Advocate
for the petitioner.

Mr. S.K. Sharma, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present revision petition, filed by the plaintiff under Article 227 of the Constitution of India, is directed against the order dated 22.09.2016 passed by the learned trial Court, whereby her application under Section 151 of the Code of Civil Procedure was dismissed and her prayer for permitting herself to be examined as her own witness was declined.

Notice of motion was issued.

Heard learned counsel for the parties.

Relationship between the parties is not in dispute. Petitioner-plaintiff is the widow of Kuldeep Singh son of Gurdial Singh. Dispute pertains to the property left behind by Gurdial Singh who died during pendency of the present revision petition. The entire property left behind by Gurdial Singh is

now in possession of Malkiat Singh, defendant-respondent No.2, meaning thereby, Gurdial Singh did not give any property to the plaintiff-petitioner, who is widow of his pre-deceased son Kuldeep Singh. It is also not the pleaded or argued case on behalf of the defendants-respondents that plaintiff-petitioner has got other source of livelihood.

So far as the impugned order is concerned, it prima facie seems that the petitioner is victim of the negligence of her earlier counsel, who was representing her before the learned trial Court. Learned counsel for respondent No.2 has been found justified in contending that once the plaintiff did not submit even her affidavit in examination-in-chief, there was no question of permitting her to be cross-examined. In fact, it seems that the plaintiff remained under bonafide wrong impression, as per the advice tendered by her earlier counsel that she was not required to be examined. Under these undisputed facts and circumstances of the case, if the impugned order is allowed to stand as it is, plaintiff-petitioner shall suffer irreparable loss and a manifest injustice would be caused to her and that too without any fault on her part, she being a semi-literate woman. Having said that, this Court feels no hesitation to conclude that since the learned trial Court failed to appreciate the abovesaid material aspects of the matter, while passing the impugned order, the same cannot be upheld.

It is also the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Every Court of law must make an endeavour to grant reasonable opportunity to the litigating parties to put up their best case before the Court. Nobody should be forced to go home with the grievance that sufficient opportunity was not granted to put up his/her case before the Court. While proceedings on the abovesaid principle, the learned

Court shall achieve twin objects namely; (i) it will avoid multiplicity of litigation between the parties and (ii) the Court would be in a position to do complete and substantial justice between the parties. So far as the present case is concerned, the learned trial Court could not appreciate the abovesaid cardinal principle of law, while passing the impugned order and the same cannot be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. The impugned order dated 22.09.2016 passed by the learned trial Court is hereby set aside. Instant revision petition deserves to be accepted and the same is allowed, directing the learned trial Court to allow the petitioner-plaintiff to submit her affidavit in examination-in-chief and then, the defendants may be permitted to cross-examine the plaintiff as her own witness, while leading her evidence in affirmative.

Resultantly, with the abovesaid observations made and directions issued, present revision petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.03.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No