

SMT JUSTICE T. RAJANI  
CIVIL REVISION PETITION No.3328 of 2018

ORDER:

Assailing the docket order dated 06.06.2018 in O.S.No.24 of 2015 passed by the II Additional District and Sessions Judge (FAC), Mancherial, the respondent therein preferred this civil revision petition. The docket order is to the effect of permitting defendant No.3 to cross-examine D.W.1, who was already cross-examined by the plaintiffs.

2. The revision is preferred on the grounds that the Court below acted contrary to the jurisdiction vested in it in passing the impugned order; it ought to have appreciated that defendant No.3 is sailing with the plaintiffs and did not lead any evidence and hence, he has no right to cross-examine D.W.1; it failed to see that the suit is for relief of declaration of title and permanent injunction, hence, the plaintiff has to stand or fall on his own pleadings and the co-defendants have no role to play in the trial *inter se* contesting parties; it ought to have appreciated that defendant No.3 has no cause of action in the suit and any decision would not be *res judicata inter se* contesting parties and it failed to appreciate that the plaintiffs have led their evidence and defendant No.3, being their witness, has not right to lead evidence after the contesting parties lead evidence and he cannot fill up the lacunae left over by the plaintiff in their cross-examination.

3. Heard counsel for the petitioner and the counsel for the respondents.

4. Defendant No.3 filed his written statement with a specific prayer, to decree the suit. He also admits that some of the contents of

the plaint true and that the remaining contents are false. But, however, he ultimately pressed the Court to decree the suit.

5. Now the counsel for the petitioner contends that having no issue with the plaintiff, defendant No.3 cannot be permitted to participate in the cross-examination of the witnesses in view of the Order 15 Rule 2 of the Civil Procedure Code, which reads as under:

“One of several defendants not at issue.- (1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

(2) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.”

The counsel contends that it is only because of the failure of the Court below to comply with Order 15 Rule 2 CPC, that defendant No.3 still stays in the picture and otherwise, the suit so far as defendant No.3 is concerned, would stand decreed.

6. The counsel for the respondents, on the other hand, contends that it is after defendant No.3 filed his written statement, that the other defendants filed written statement, some of the contents of which are against his interest and hence, he has to be permitted to be cross-examine D.W.1. In that regard, he relied on a decision of the Hon'ble Punjab-Haryana High Court in *KARTAR SINGH v. THAKUR SINGH* decided 03.04.2002.

7. However, the aforesaid decision pertains to the aspect of cross-examination by the defendant of a co-defendant. It was held that the

defendants are entitled to cross-examine the co-defendants to the extent of their clash of interest and however, if at the appropriate stage, it is found that both the defendants were, in fact, colluding, the same can be appreciated by the Court at the appropriate stage and denial to cross-examine will lead to more harm than to allow them to cross-examine. That was not a case where Order 15 Rule 2 CPC could have been applied.

8. The counsel for the petitioner relied on a decision of the same High Court in *BALBIR KAUR v. BLAWINDER KAUR*<sup>1</sup> wherein the facts are almost similar to the facts of this case. The suit therein was contested by defendants 1 to 3, who were the petitioners before Hon'ble High Court of Punjab and Haryana. However, admitted by written statement was filed by respondents 1 to 4, who are defendants 4 to 7. They have not contested the suit of the plaintiff on any ground, as was clear from the written statement filed by them and rather they have taken the plea that they have no objection if the suit filed by the respondent/plaintiff is decreed, as per the settlement arrived at between the parties. Issues were framed by the trial Court in view of contesting written statement filed by other defendants. The evidence was adduced by the plaintiff when the application was filed by respondents 1 to 4, permitting them to adduce evidence, which was contested by defendants 1 to 3. The trial Court therein allowed respondents 1 to 4 to adduce evidence by relying on a decision rendered by a Coordinate Bench in *PRITPAL SINGH AURORA v. RAJINDER SINGH AURORA* [2009 (3) CIVIL COURT CASES 752].

---

<sup>1</sup> 2011 SCC ONLINE P&H 4342

The contention that the said decision is not applicable to the facts of that case was considered. The contention being based on the fact that defendants 4 to 7 are not at issue, at any point of time, with the plaintiffs and that only defendants 1 to 3 are contesting the suit filed by the plaintiffs. It was contended that when they are not at issue on any point with respondents/plaintiffs, they are not having any right to adduce evidence and that rather the suit filed by the plaintiffs against respondents 1 to 4/defendants 4 to 7, should have been decreed by the trial Court under Order 15 Rule 2 CPC. The contention of defendants 4 to 7 was also recorded, which is that thought they are not at issue with respondents/plaintiffs, they are also having disputes with defendants 1 to 3 as they are denying family settlement, in which specific portion was given to defendants 4 to 7. But the High Court, relying on Order 15 Rule 2 CPC, held that the defendants, who do not have any issue with the plaintiffs, cannot adduce evidence.

9. In this case also, the contention of the counsel on either side are the same, as made by the counsel in the above decision and hence when the right of adducing evidence itself is denied to the defendant, who is not at issue with the plaintiff, his right to cross-examine the co-defendants cannot be said to exist.

Hence, in view of the above, the civil revision petition is allowed and the order of the Court below is set aside. As a sequel, the miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

August 27, 2018/DSK