

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

Civil Revision No.1798 of 2018 (O&M)

Date of decision: May 29, 2018

Tejinder Singh

...Petitioner

Versus

Gurpreet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Yashasvi Kapila, Advocate for
Mr.Kunal Dawar, Advocate
for the petitioner.

Mr.Zorawar Singh, Advocate
for respondent No.1.

Mr.Avtar Singh Barnala, Advocate
for respondents No.2 and 3.

INDERJIT SINGH, J.

Petitioner Tejinder Singh has filed this revision petition against Gurpreet Singh and other respondents under Article 227 of the Constitution of India for setting aside the order dated 02.11.2017 passed by learned Civil Judge (Junior Division), Ludhiana, vide which the cross-examination of PW-3 was recorded as nil and order dated 08.02.2018, whereby application moved by petitioner-defendant No.1 for recalling witness PW-3 Pawan Kumar Gaur for cross-examination was dismissed.

Notice of motion was issued. Learned counsel for respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Gurpreet Singh filed a suit against Tejinder Singh and other defendants for declaration that plaintiff has 30% share in the property and for separate possession by partition of property in dispute. During the pendency of the suit, learned Civil Judge (Jr. Divn.), Ludhiana, passed order dated 02.11.2017 as under:-

“PW-4 G.S. Narang tender into evidence his duly sworn affidavit Ex.P4 alongwith document Ex.P4/A. His cross examination deferred on request of counsel for defendant. PW-3 Pawan Kumar Gaur examined but counsel for defendant no. 1 to 3 did not turn up for his cross-examination. As such his cross-examination by defendant no. 1 to 3 is recorded as Nil.

No other PW is present. Summons of witness Concerned Clerk/ Record Keeper, office of Sub-Registrar (East), Ludhiana not received back. Fresh summons be issued to the said witness for 28.11.2017. Dasti summons be also issued. Earlier cost be also paid on the said date.

Summon issued to Gurmeet Singh, Data Entry Operator, not received back served or unserved. He be again summoned for said date. Remaining PWs be summoned as per application. Dasti summon be issued if any witness is to be summoned.”

Then, an application was filed by defendant No.1 for recalling PW-3 Pawan Kumar Gaur for his cross-examination, wherein, it has been stated that on 02.11.2017 no witness of the plaintiff was present till lunch and the counsel of the defendant no.1 had enquired about the plaintiff witness as well. However, he came to know that the cross examination of PW-3 Pawan Kumar was recorded as nil and cross examination of PW-4 was deferred. The defendant no.1 had gone to call his counsel who was busy in some other court. As PW-3 is material witness, prayer was made to recall him for the purpose of his cross-examination.

Learned Civil Judge (Jr. Divn.) Ludhiana, vide order dated

08.02.2018 dismissed the application.

Aggrieved from the above-said orders, present revision petition has been filed.

From the record, I find that the case was fixed for plaintiff's evidence on 02.11.2017 and it was again fixed for plaintiff's evidence for 28.11.2017. As per the order dated 02.11.2017 the cross-examination of PW-3 was treated as nil. It is settled law that rights of the parties should be determined on merit as far as possible and the Court should do substantial justice between the parties and to determine rights of the parties substantially and finally and should not go into the technicalities of law. If application in question is not allowed and the chief-examination of PW-3 remained unchallenged on the record, then the defendants will suffer irreparable loss. No prejudice of any type is going to be caused to the plaintiff if this application is allowed.

In the interest of justice, the application filed by the defendant No.1-petitioner for recalling PW-3 for cross-examination is allowed, subject to costs of ₹5000/- to be paid to the plaintiff-respondent No.1. However, it is made clear that only one effective opportunity will be given to defendant No.1 to cross-examine PW-3 Pawan Kumar Gaur.

In view of the above observations, the present petition stands allowed.

May 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No