

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

Civil Revision No.2217 of 2017 (O&M)

Date of decision: May 15, 2018

Haryana Wakf Board

...Petitioner

Versus

Ram Singh (deceased) through LRs.

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gulam Nabi Malik, Advocate
for the petitioner.

Mr.Sanjay Jain, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner Haryana Wakf Board has filed this revision petition against respondent Ram Singh (deceased) through LRs under Article 227 of the Constitution of India for setting aside the order dated 03.02.2017 passed by learned Addl. District Judge, Ambala and order dated 26.05.2015 passed by learned Civil Judge (Junior Division), Ambala, whereby the evidence of the plaintiff-petitioner was closed by Court order and application for recalling the same was also dismissed.

Notice of motion was issued. Learned counsel for the respondent 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 Haryana Wakf Board, Ambala Cantt, filed a suit against Ram Singh (deceased) through LRs, for getting the possession of property bearing M.C. No.51, total area measuring 130 sq. yards out of khasra No.81 as described in the site plan by way of ejectment of the defendant. Learned Civil Judge (Jr. Divn.) vide order dated 26.05.2015 declined further adjournment to the plaintiff as it has availed sufficient opportunities to conclude its evidence but failed to conclude and the evidence was closed by Court order. An application was filed to recall the order but the same was dismissed by learned Addl. District Judge, Ambala vide order dated 03.02.2017. Aggrieved from the above-said orders, present petition has been filed.

At the time of arguments, learned counsel for the petitioner-plaintiff admitted that though there is some negligence on the part of the plaintiff that it could not conclude its evidence but the plaintiff wants to examine only one witness by calling the record from the Estate Office and prayed that only one opportunity be given subject to payment of costs. Learned counsel for the respondent contested this point and argued that already reasonable opportunities have been granted to the plaintiff.

From the record, I find that if the witness from the Estate Office is not summoned, the plaintiff will suffer irreparable loss. The plaintiff wants to prove notice under Section 106 of the Transfer of Property Act etc., which has been given to the respondent. It is a material evidence and necessary for the just decision of the case and also to do substantial justice between the parties and to determine their rights on merit. Otherwise also, it is settled law that right of the parties should be determined on merit as far as possible and substantial justice should be done between the parties and

the Court should not go into the technicalities of law. No prejudice will be caused to the respondent if one opportunity is granted to the petitioner-plaintiff to complete its evidence. The respondent-defendant will get opportunity to cross-examine that witness and further, if the defendant has also closed the evidence, then he should also be given one opportunity to produce the evidence, if any, in rebuttal.

Keeping in view the above facts and in the interest of justice, one effective opportunity is granted to the petitioner-plaintiff to produce and complete its evidence, subject to costs of ₹10,000/- to be paid to defendants. The defendant will be given opportunity to cross-examine the witness and further, one effective opportunity will also be given to the defendant to produce evidence in rebuttal, if the defendant has already closed the evidence.

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

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 15, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No