

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

**Civil Revision No.3074 of 2018 (O&M)
Date of Decision: 15.10.2018**

Chattar Pal

.....Petitioner

Vs

Saroj Yadav etc.

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. J.S. Hooda, Advocate
for the petitioner.

Mr. G.S. Bedi, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the order dated 10.04.2018 passed by the Civil Judge (Jr. Divn.) Gurugram, whereby prayer for production of witnesses, who were already allowed to be produced was declined.

[2]. Perusal of the record would show that the evidence of the plaintiff/petitioner was closed vide order dated 25.01.2018. On 22.01.2018, two PWs namely Parkash Chand and Virender Singh were examined and the case was adjourned for 25.01.2018 for consideration of relevancy of witnesses cited by

the plaintiff. Plaintiff was directed to submit in writing about the relevancy of remaining witnesses namely Smt. Urmila Saini, Dinesh Yadav and *Halqa Patwari* of village Kadipur, who were sought to be examined. Having not done so, the trial Court proceeded to close the evidence of the plaintiff by order of the Court on 25.01.2018.

[3]. Against the aforesaid order, CR No.845 of 2018 was filed in the High Court and the same was disposed of vide order dated 08.02.2018. In the said petition, it was submitted by learned counsel for the petitioner that due to inadvertence, written submission could not be filed by the petitioner before the trial Court. Learned counsel prayed for an additional opportunity to apprise the trial Court in respect of relevancy of the witnesses. The High Court considered the submissions made by learned counsel for the plaintiff/petitioner and opined that the plaintiff/petitioner would have to explain the relevancy of examination of summoned witnesses to the trial Court orally or by filing written submissions. Plaintiff/petitioner showed his willingness to explain the relevancy of examination of the witnesses orally or by filing written submissions before the trial Court. It was also observed that if the trial Court is satisfied in respect of relevancy of witnesses, then it would be at liberty to allow such evidence to be produced without being prejudiced by

the order dated 25.01.2018.

[4]. Thereafter the impugned order dated 10.04.2018 came to be passed, in which the trial Court has noticed that Dinesh Yadav, who was impleaded as defendant No.1 was given up vide statement dated 19.01.2016. Smt. Urmila Saini was the vendor of defendant No.3 Smt. Sheela Devi. Plaintiff sought to explain the relevancy of the witnesses by submitting that Dinesh Yadav (defendant No.1) by virtue of statement of learned counsel for the plaintiff dated 19.01.2016 was no more defendant. Smt. Urmila Saini was required to be examined as witness because she had sold out the plot to defendant No.3. The property in question was situated at village Kadipur and the same was sold out without permission of the concerned authority. For change of land use and for detail regarding the property, Halqa Patwari was required to be examined.

[5]. While issuing notice of motion on 09.05.2018, it was noticed that the petitioner had filed written submissions, but at the same time he claimed that the relevancy of the witnesses was not pleaded in the written submissions as the same was to be disclosed to the trial Court orally in order to ensure that the case of the petitioner may not be prejudiced at pre-summoning stage.

[6]. Perusal of the impugned order shows that the relevancy

of witnesses was considered by the trial Court in the context of stand of the petitioner that he claimed himself to be owner in possession of the plot. The examination of third person, who had allegedly sold the plot to defendant No.3 was not considered to be relevant. Relevancy of Patwari was not pleaded with reference to authorized plot connecting with the suit property. Case of the plaintiff was that he was owner in possession of the property and was constructing boundary wall. Defendants were creating interference in the possession of the plaintiff. No specific pleadings were made in the plaint. No issue was framed in respect of connecting road. Even no prayer was made for declaring the sale deed to be illegal.

[7]. During course of arguments, it has been revealed that Dinesh Yadav and Smt. Urmila Saini have been examined as defendants' witnesses. Plaintiff was well within his right to cross-examine the witnesses in accordance with law. In any case, relevancy of the witnesses was the issue and having not demonstrated before the trial Court, now the same cannot be appreciated in the present case, where the evidence of the plaintiff has again been closed by order of the Court.

[8]. In view of findings recorded by the trial Court, no such relevancy was disclosed by the petitioner except the written submissions which were duly considered while passing the

impugned order. Therefore, I do not see any error of jurisdiction in the impugned order. This revision petition is accordingly dismissed.

October 15, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No