

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

CR No.390 of 2011

Date of Order: 20.02.2018

Chander Parkas
(Deceased through LRs)

....Petitioner

Versus

Dushyant Kumar & Ors

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Verma, Advocate for the petitioner.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 25.09.2010 whereby an application for re-examination of PW4-S.K. Tyagi, by taking the aid of provisions of Section 154 of the Evidence Act, has been dismissed.

Learned counsel for the petitioner submitted that the petitioner-plaintiff instituted a suit, claiming declaration that he being owner in possession of land measuring 23 kanal 5 marlas as share-holder comprised in Khasra No.15//5 (8-0), 14//1 (8-0) 10//21-min (7-5) Khewat No.126, khatoni No.209 as per jamabandi for the year 1999-2000 situated in village Naya Gaon, Tehsil Uklana Mandi, District Hisar He laid challenge to sale deed No.1316 dated 24.2.2004 executed in favour of defendant No.3 on the basis of forged power of attorney dated 16.2.2004 with consequential relief of injunction. Occasion to file suit arose only when the petitioner

came to know that the GPA dated 16.2.2004 was misused by defendant No.1 ie his brother, who while acting as agent of the plaintiff sold the land to defendant No.3 (Sultan Singh). The petitioner made a complaint to the police. An FIR was registered (in this respect) in which the Sub Registrar-S.K. Tyagi gave a Certificate (Ex.P.8) to the effect that it did not bear his signatures on the GPA. In order to prove the aforesaid case, he was examined as PW4 but he came out with different version by saying that he had appended signatures on the blank papers. In support of his contention, learned counsel relied upon a judgment of Hon'ble Supreme Court in **Dayabhai Chhagan Bhai Thakkar Vs. State of Gujrat, AIR 1964, SC 1564** to contend that the prayer in the application has wrongly been declined. It is contended that the trial Court while passing the impugned order ought to have confined only to the contents of the application.

Per contra, learned counsel for respondents submitted that it is not the case where witness of the petitioner-plaintiff has turned hostile at the stage of cross examination. Had it been so, there would have been some force in the arguments of the petitioner much less giving cause to file application. In the absence of the same, the application has rightly been dismissed.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of convenience, provisions of Section 154 of Evidence Act reads as under:

“154. Question by party to his own witness. (1) The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.”

The Certificate produced by said S.K. Tyagi before the Police is dated 09.3.2006 (P.1) and the same reads as under:

“I hereby confirm that the G.P.A bearing No.4714, Book No.4, Volume No.3495 Dated 16.02.2004, was presented in my office for registration. However, as the executant, CHANDER PRAKASH, s/o SHRI UTTAM CHAND was not present before me, therefore, the said G.P.A was not signed by me. The alleged G.P.A do not bear my signature.”

When S.K. Tyagi appeared for examination in chief on 20.8.2010, he made the following statement:

“PW4 Sh. S.K. Tyagi, Sept Education, Delhi on S.A. It is stated that the declaration dated 9.3.06 bears my signatures which is Ex.P8 in the summoned file, on which my signatures exist, but the same were obtained from me on blank papers . On its line no.2 my initial exists, the true certified copy of which is Ex.P6. XXX by Sh. O.P Saini proxy counsel. Cross deferred on request of proxy counsel, as the main counsel is out of station.”

In this background of the matter, the aforesaid application was moved but the prayer in the application was declined. In my view, the trial Court has failed to take into consideration the provisions of Section 154 of the Evidence Act which clearly envisages that the Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

I am of the view that in case the aforesaid witness was allowed

to be cross examined or re-examined, no harm and prejudice would be caused to the defendants since they would have opportunity to cross examine him and put questions again.

In view of aforesaid, present petition is allowed and order dated 25.09.2010 is set aside. PW4-S.K. Tyagi is permitted to be re-examined.

February 20, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No