

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5701 of 2015(O&M)
Date of Decision: 05.10.2018

Gurkirat Singh

.....Petitioner

Versus

Hakam Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Inderjeet Singh Brar, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 09.07.2015 passed by Civil Judge (Junior Division), Faridkot vide which the application filed by defendant No.3 under Order 18 Rule 17 CPC in a suit for declaration to the effect that the plaintiffs and defendants are joint owners and are entitled to partition of house, defendant/petitioner was impleaded as defendant No.3 was dismissed.

[2]. Petitioner filed an application under Order 18 Rule 17 CPC for recalling Hakam Singh for further cross examination. Defendant No.1 engaged Mr. Prem Kumar, Advocate, whereas defendant No.3 engaged Mr. B.S. Dhaliwal, Advocate to contest the suit.

[3]. On 23.07.2014, learned counsel for defendant No.1 cross examined the witness, whereas learned counsel for the petitioner did not avail the opportunity.

[4]. Perusal of the record would show that the presence of learned counsel for the petitioner/defendant No.3 was duly marked in the judicial record on 23.07.2014. Both the Advocates namely Mr. Prem Kumar and Mr. B.S. Dhaliwal were present in the Court on behalf of the defendants and the cross examination was done by Mr. Prem Kumar, Advocate. The evidence of the plaintiff was closed.

[5]. Perusal of the record would also show that the case was deferred for cross examination of Hakam Singh PW 1 on 18.02.2014 for 07.04.2014. Thereafter, the case was again adjourned to 12.05.2014, but he was not cross examined by the learned counsel for the defendants. The witness was again called for cross examination on 23.07.2014. On the said date, Hakam Singh was present and was cross examined. Thereafter, evidence of the plaintiff was closed in affirmative.

[6]. Before filing the present application, the case was adjourned for nine times for defendants evidence. On 10th occasion, present application came to be filed that too under Order 18 Rule 17 CPC.

[7]. In **Surinder Kaur Vs. Karanbir Singh, 2004 (3) RCR**

(Civil) 161, it was held that the provision is merely an enabling provision for the convenience of the Court and the same cannot be used by the parties to re-examine any witness in order to fill lacuna in the case. The power under Order 18 Rule 17 CPC has to be exercised sparingly that too in exceptional circumstances. Though, the Court may at any stage of the suit recall any witness, who has been examined and may put such questions to him as the Court thinks fit, but the said provision does not permit a party to re-examine any witness to fill lacuna in the case. The language of Order 18 Rule 17 CPC is limited to the extent of convenience of the Court, where the Court requires such evidence to be led. The assistance of the Court for exercise of its inherent power under Section 151 CPC cannot be utilized to fill lacuna in the case particularly in view of attending circumstances present on record.

[8]. The Hon'ble Apex Court in **Ram Rati Vs. Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464** has also embarked upon the controversy of such type where Hon'ble Apex Court has ruled that recalling of witness for further elaboration on the left out points is wholly impermissible in law.

[9]. In the instant case, Mr. Prem Kumar, Advocate for defendant No.1 has already cross examined the witness. Both the Advocates for the defendants were very much present in the

Court at the time of cross examination of the witness. During interlocutory orders on record, if something remains obscure in the present set of circumstances, the same cannot be allowed to be filled in specially in terms of Order 18 Rule 17 CPC. The discretion of the Court has to be exercised judicially and not arbitrarily.

[10]. For the reasons recorded hereinabove, I do not find any justification to interfere in the impugned order. This revision petition is accordingly dismissed.

October 05, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No