

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

CR No. 6644 OF 2018(O&M)

Date of decision: 01.10.2018

Kirpal Kaur and anr.

.. Petitioners

vs.

Malvinder Singh and ors.

.. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Chirag Wadhwa, Advocate
for the petitioners.

Harinder Singh Sidhu, J.

This revision petition has been filed by the petitioners impugning the order dated 04.09.2018 passed by learned Civil Judge (Junior Division) Karnal whereby their application for leading additional evidence by way of summoning of respondent No.3 as a witness has been dismissed.

The plaintiffs(petitioners herein) had filed a suit for declaration with consequential relief of permanent injunction to the effect that they are owners in possession of the agricultural land measuring 110K-10M and for restraining the defendants-respondents from interfering in the peaceful possession of the plaintiffs over the suit land.

Respondents No.1 to 3 are the defendants No. 1 to 3 in the suit. They filed a joint written statement denying the assertions made by the plaintiffs on merits. Issues were framed on 17.04.2017. The plaintiffs concluded their evidence on 02.05.2018. Defendant No.2 appeared as DW-1. The defendants also examined one Gurnam Singh as DW-2 and closed their defence evidence on 28.05.2018.

Thereafter the plaintiffs (petitioners herein) moved the application for leading additional evidence by way of summoning defendant no.3 as a witness. It was pleaded that the father of defendant

No.3 had given one acre of land out of his share to the father of the plaintiffs in a family settlement. It was also pleaded that this fact can be proved by examining/summoning defendant no.3. It was further pleaded that the plaintiffs were under the impression that defendant no.3 would appear as a witness on behalf of the defendants and the plaintiffs would get an opportunity to cross-examine her, but she did not appear. Hence it is necessary to record her statement for just and proper adjudication of the case.

Learned trial Court while dismissing the application of the petitioners, observed that there was an unreasonable and unexplained delay on the part of the petitioners in moving the application. They had availed as many as eleven constructive opportunities and thereafter closed their evidence on 2.5.2018. Even after the defendants' evidence was closed, the case was adjourned five times for enabling the plaintiffs to lead rebuttal evidence and at a very belated stage, the application was moved. The plaintiffs have not been able to explain that despite exercise of due diligence, they had not been able to examine defendant no.3 earlier. It was also observed that by moving the application, the plaintiffs just wanted to fill up the lacuna in the case, which cannot be permitted. The plaintiffs have already examined their witnesses and the other defendants have also been examined by the defendants, so, there is no requirement of examination of this witness for just and proper decision of the case. Further, the matter in dispute could be effectively decided without examination of defendant no.3. For all these reasons, learned trial Court dismissed the application.

There is no ground to interfere in the impugned order.

Dismissed.

01.10.2018
dinesh

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes
Yes/No