

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

Sr. No.119

C.R. No.7256 of 2018 (O&M)

Date of decision: 21.11.2018

Harinder Singh

....Petitioner

versus

Sarabjit Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. G.S. Nagra, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 01.10.2018 passed by the Civil Judge (Junior Division), Ludhiana (for short – the Trial Court) through which an application preferred by the petitioner under Order 18 Rule 3-A CPC has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No.1 filed a suit seeking therein to declare Will dated 31.05.1989 executed by Harwand Singh alias Harbans Singh in favour of the petitioner/defendant No.1 to be null and void. Possession of the properties detailed and described in the head note of the plaint (for short – the suit property) by way of partition was also claimed. It was further prayed that the petitioner/defendant No.1 be restrained from alienating the suit property in any manner. On being put to notice, the petitioner alongwith other defendants in the suit put in appearance before the Trial Court and opposed the claim set up by respondent No.1. Thereafter, the Trial Court framed issues. The first

witness to be examined by respondent No.1/plaintiff was one Tarsem Lal Jain and since he was not the plaintiff, an application was preferred by the petitioner under Order 18 Rule 3-A CPC requiring the Trial Court to first examine respondent No.1/plaintiff before Tarsem Lal Jain. Such application was dismissed by the Trial Court giving a cause to the petitioner to file the present petition.

Learned counsel for the petitioner has been heard.

The record reveals that one Tarsem Lal Jain was permitted by the Trial Court to be examined before the plaintiff on the ground that Tarsem Lal Jain was a man of old age and suffering from several ailments; when Tarsem Lal Jain was being examined no objection was raised on behalf of the petitioner by his counsel and that the provisions of Order 18 Rule 3-A CPC have been held to be directory in nature by a Full Bench of this Court in **The Amritsar Improvement Trust versus Ishri Devi, 1979 PLR 354** as also in a recent judgment of this Court in **Lalit @ Lalit Kumar and another versus Kailash and others, 2017(5) R.C.R. (Civil) 208.**

The factual basis of the reasoning given by the Trial Court nor the law laid down by this Court in **The Amritsar Improvement Trust's case (supra) and Lalit @ Lalit Kumar's case (supra)** is contested before this Court. Even otherwise, on consideration, no error is found in the order impugned in the present proceedings.

Dismissed.

November 21, 2018
Jyoti 1

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No