

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

**CR No.937 of 2018
Date of decision:12.02.2018**

Manjinder Singh and another ... Petitioners

Vs.

Baldev Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Balbir Singh Jaswal, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioner-defendants are in revision petition against the order dated 09.01.2018 (Annexure P-12), vide which the application filed under Order 18 Rule 17 read with Section 151 of Code of Civil Procedure to recall PW1- Baldev Singh, PW2- Amarjit Singh and PW3-Hardial Singh for their re-cross examination by the counsel for the defendants, has been dismissed.

Mr. Balbir Singh Jaswal, learned counsel for the petitioner-defendants submitted that the respondent-plaintiffs instituted a suit for decree of permanent injunction restraining the defendants from interfering or dispossessing them from the suit land measuring 34 kanals 11 marlas, except in due course of law. Respondent No.1/plaintiff is a practicing lawyer aged 60 years. The petitioners could not avail the services of the lawyer because of influence of respondent-plaintiffs which necessitated

them re-cross examination of aforementioned PWs. When the matter was listed for defendants' evidence, PW1 summoned witness appeared but was not cross-examined and on several dates, he did not come forward under the pressure of respondent No.1/plaintiff, necessity arose to approach this Court, wherein, direction was issued to the trial Court to take recourse to the provisions of Code of Civil Procedure for summoning him, in accordance with law. The transfer petition was also filed to transfer the case from Tarn Taran to any other Court of competent jurisdiction which was allowed and the case was transferred to Khandoor Sahib. Now counsel in Amritsar agreed to defend them in the case. In this regard, the aforementioned application was filed which has erroneously been dismissed vide impugned order. Even the trial Court remained oblivious whether the application was either on behalf of the plaintiffs or on behalf of the defendants, therefore, the impugned order suffers from illegality and perversity.

I have heard the learned counsel for the petitioner-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jaswal.

The availability of the counsel at the final stage of the suit, for recalling the witnesses for re-cross examination, in my view, is not permissible as it tantamounts to filling up of the lacuna. The injunction suit is always based upon the documentary evidence and not on cross-examination and certain other statements which have already come on record. Even the defendants have already led the evidence.

In view of the aforementioned observations, I do not find any illegality and perversity in the impugned order, much less the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 12, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No