

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 256

CR-7682-2018 (O&M)

Date of decision : 10.12.2019

Des Raj and others

..... Petitioners

VERSUS

Manohar Lal

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Vishal Munjal, Advocate, for the petitioners.

Mr.Munish Puri, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the orders dated 26.09.2018 and 11.10.2018, passed by the Civil Judge (Junior Division), Pathankot (for short, the Trial Court), through which the petitioners have not been permitted by the Trial Court to cross examine the respondent's three witnesses namely Ram Lal, Jasbir Singh and Pushp Lata.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein to be declared owner in possession of the properties detailed and described in the head note of his plaint (for short, the suit properties). Mutation of inheritance No.899 dated 12.12.2013 qua part of the suit land detailed in the head note of the plaint was also challenged. Consequential relief of injunction to restrain the petitioners/defendants from interfering in the peaceful possession of the respondent over 2/5th share of the suit properties and from alienating the suit properties was also sought. Separate possession of share of the respondent alleged to have been directly inherited by him from his father and mother namely Sh.Charan Dass and Smt.Amarti Devi was also claimed. Partition of the suit properties was also sought.

On being put to notice, the petitioners, who were the defendants in the suit, appeared before the Trial Court and contested the respondent's suit.

On the dispute between the parties the Trial Court framed issues and thereafter the respondent led his evidence which included examination of three witnesses namely Ram Lal, Jasbir Singh and Pushp Lata. Ram Lal was twice partly cross examined by the petitioners but since on one date when he was available, he was not cross examined by the petitioners, the Trial Court, on the next date fixed before it did not grant permission to the petitioners to cross examine him. Similarly, when Jasbir Singh and Pushp Lata, who had also been examined-in-chief, were not cross examined by the petitioners in spite of the fact that they were available, the Trial Court passed orders to treat their cross examination as nil.

Learned counsel for the petitioners submits that the petitioners be granted one opportunity to cross examine the respondent's aforesaid three witnesses as they could not be cross examined by the petitioners as the petitioners' counsel on the date(s) when the aforesaid witnesses were available was busy before some other Court.

Per contra, learned counsel for the respondent submits that already adequate opportunity had been granted to the petitioners to cross examine his aforesaid three witnesses and therefore, the Trial Court rightly ordered to treat cross examination of Jasbir Singh and Pushp Lata as nil and further rightly declined the petitioners' prayer to further cross examine Ram Lal.

The record reveals that after his examination-in-chief Ram Lal was available for his cross examination on three occasions out of which on two occasions he was partly cross examined by the petitioners but only on one occasion the petitioners failed to cross examine him. Same is the case with regard to Jasbir Singh who was examined-in-chief on 26.09.2018 with the next date fixed in the trial being 11.10.2018 on which date the petitioners failed to cross examine him. Thus, one opportunity granted to the petitioners to cross examine Jasbir Singh was not availed of by them.

In the light of the above, it is clear that on one date each the petitioners failed to cross examine the available witnesses namely Ram Lal and Jasbir Singh and that too on the ground that on that date their counsel was busy before some other Court.

Keeping in view the above facts as also in line with the principles of natural justice and for the reason that at the threshold of the trial the petitioners may not be precluded from cross examining the respondent's aforesaid three witnesses, subject to the payment of ₹10,000/- as costs, to be paid by the petitioners to the respondent, the impugned orders are set aside and the petitioners are granted one opportunity to cross examine all three aforesaid witnesses of the respondent namely Ram Lal, Jasbir Singh and Pushp Lata. The Trial Court shall summon the aforesaid witnesses on one date on which the petitioners shall be granted an opportunity to cross examine all three of them. No further opportunity shall be granted to them for the said purpose.

The petition is allowed in the above terms.

The Trial Court shall ensure that the costs ordered to be paid by the petitioners to the respondent are transferred to the respondent's bank account.

10.12.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No