

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 912 of 2019
Date of decision:26.2.2019

Surinder Kumar

.. Petitioner

v.

Jawahar Lal

.. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sunil Garg, Advocate for the petitioner.

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AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 18.12.2018 passed by Additional Civil Judge (Senior Division), Patiala (hereinafter described as 'Civil Court') dismissing the application filed by the petitioner-defendant (hereinafter described as 'the petitioner') directing the respondent-plaintiff (hereinafter described as 'the respondent') to give blood sample for the purpose of DNA test.

The facts in brief are that the respondent filed a suit for mandatory injunction directing the petitioner to vacate and hand over the possession of shop No. 3229/1, situated at Sheranwala Gate, Patiala, detailed in the plaint. It was pleaded in the suit that the respondent out of a

good gesture allowed the petitioner to use the shop as a licensee, which has been revoked and possession is sought. On completion of pleadings, an application was made by the petitioner that the respondent be directed to give blood sample for DNA test as in the written statement it has been pleaded that the petitioner and the respondent are brothers from common mother but different fathers. Vide impugned order, the application was dismissed, hence the present revision petition.

Learned counsel for the petitioner contends that the Civil Court erred in holding that the issue in the suit is with regard to the property and not of relationship between the parties. He further argues that the Civil Court has wrongly held that Order XXVI Rule 10A of the Code of Civil Procedure, 1908 (for short, 'CPC') cannot be used for collecting evidence. He relies upon the judgments of the Supreme Court and this Court in **Kanthamma v. K. Shettappa and others, 2014(1) R.C.R. (Civil) 573** and **Ram Dayal and others v. Imarti, 2016(4) Law Herald 2919.**

The contention raised by learned counsel for the petitioner lacks merit. As is evident, it is only a suit for mandatory injunction for possession of the shop. The title of the shop is not in dispute. The judgments relied upon by learned counsel for the petitioner do not enhance his case.

The issue is not as to whether evidence is to be collected or not on behalf of one party or the other. It is for the court to determine the relevance of material sought to be adduced to decide the real controversy. The application like the present one cannot merely be allowed for satisfaction of the applicant even in cases where there is no relevancy of the said issue. The relationship between the the respondent and the petitioner is

not the issue involved to decide the controversy in suit.

The present revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

26.2.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No