

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

Sr. No.116

CR-1751-2019

Date of decision: 13.03.2019

Jyotsna Khunger

....Petitioner

versus

Sarla Monga and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Munish Behl, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 25.02.2019 passed by the Civil Judge (Junior Division), Gurugram (for short – the Trial Court) through which a Commissioner was appointed to go to Ludhiana to record the statement of S/Sh. Ajay Kumar Jindal and J.K. Tiwari.

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 be declared to have inherited 1/5th share out of both movable and immovable properties of her deceased brother-Kuldev which properties were detailed and described by her in para no.2 of the plaint (for short – the suit property). Partition of the suit property and possession qua her share was also sought. On being put to notice, the petitioner, who was defendant No.3 in the suit, appeared before the Trial Court and filed her written statement through which she refuted respondent No.1's claim. The

other defendants in the suit also filed their written statements. The Trial

Court then framed issues. While respondent No.1 was in the midst of leading her evidence, respondent No.5, who was also defendant No.5 in the suit, filed an application seeking therein the issuance of a direction by the Trial Court for examination, through video conferencing, of two attesting witnesses to the Will of the father of the petitioner and respondent No.5. Such application was filed on the ground that these two witnesses were at Ludhiana and had been medically advised not to travel. Medical record of the ill health and advice of the doctor to the effect that the said witnesses were unable to travel from Ludhiana to Gurugram was annexed with the application. The petitioner, though a co-defendant, filed a reply opposing the prayer made in the aforesaid application. It was submitted that the two witnesses who were sought to be examined through video conferencing were Advocates and were regularly appearing in Ludhiana Courts. The Trial Court while rejecting the prayer made by respondent No.5 for examination of the aforesaid two witnesses by way of video conferencing appointed a Court Commissioner to go to Ludhiana to record their statements. Permission was also granted to the petitioner to cross-examine these witnesses at Ludhiana in the presence of the Court Commissioner. Such order of the Trial Court is under challenge in the present proceedings.

Learned counsel for the petitioner submitted that in the application filed by respondent No.5 the only prayer made therein was that S/Sh. Ajay Kumar Jindal and J.K. Tiwari , who were at Ludhiana, should be examined through video conferencing and once such plea had been rejected by the Trial Court, no further orders with regard to appointment of a Court Commissioner, for examination of the aforesaid witnesses, could and should have been passed. It was further submitted that S/Sh. Ajay Kumar Jindal

and J.K. Tiwari were practising Advocates at Ludhiana and were regularly appearing before the Courts at Ludhiana and therefore, there was no need to appoint a Commission to examine them at Ludhiana.

The order under challenge is dated 25.02.2019 through which the Trial Court appointed a Court Commissioner to go to Ludhiana to record the statements of S/Sh. Ajay Kumar Jindal and J.K. Tiwari. The date for recording of evidence at Ludhiana was fixed after both parties had consented to the same. As directed by the Trial Court, on the consented date, the Court Commissioner went to Ludhiana and recorded the statement of Shri A.K. Jindal, Advocate. Admittedly, the same was done in the presence of the counsel for the petitioner. Shri J.K. Tiwari, was not examined as he did not make himself available. The challenge to the impugned order has been made after it has already been executed. Further, the petitioner, through her counsel, took part in the execution thereof. Thus, the petitioner is estopped from challenging the same.

The afore submissions made by learned counsel for the petitioner do not merit acceptance. It is true that respondent No.5 had filed an application seeking examination of S/Sh. Ajay Kumar Jindal and J.K. Tiwari by way of video conferencing but the Trial Court was of the view that since these two persons were the alleged witnesses to the Will of the father of the petitioner and respondent No.5, their examination by way of video conferencing would not serve the purpose as during the course of video conferencing their signatures on the aforesaid Will, could not be put to them for their admission or denial. Thus, physical presentation of the Will to the witnesses was considered necessary which could not have been done through video conferencing. The approach adopted by the Trial Court is

found to be just and fair. It does not warrant any interference.

The plea of the learned counsel for the petitioner that both S/Sh. Ajay Kumar Jindal and J.K. Tiwari were regularly appearing before the Ludhiana Courts and therefore, could have been examined at Gurugram also merits rejection as in his application respondent No.5 had appended medical record as also the advice of the Doctor through which both S/Sh. Ajay Kumar Jindal and J.K. Tiwari had been found unfit to travel. Thus, even if S/Sh. Ajay Kumar Jindal and J.K. Tiwari were appearing in the Courts at Ludhiana it did not mean that they were fit to travel from Ludhiana to Gurugram. No medical evidence to the contrary was produced by the petitioner.

Even otherwise the impugned order does not put the petitioner to any prejudice for the reason that through it two witnesses have been ordered to be examined by the Court Commissioner in the presence of the petitioner or her counsel with a further opportunity to the petitioner to cross-examine the said witnesses.

There is not even an allegation of any mala fide against the Advocate who has been appointed as the Court Commissioner.

In view of the above, no merit is found in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

March 13, 2019
Jyoti 1

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