

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2953 of 2016
Date of Decision:8.1.2020

Kamaljit Singh ...Petitioner

Versus

Shiv Dev Singh and others ...Respondents

Civil Revision No.7320 of 2018

Satjit Singh ...Petitioner

Versus

Kamaljit Singh and others ...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Shrey Goel, Advocate and
Mr.Shvetanshu Goel, Advocate
for the petitioner in CR-2953-2016
for respondent No.1 in Civil Revision No.7320 of 2018

Mr.Manuj Nagrath, Advocate
for respondent No.2 in CR-2953-2016 and
for the petitioner in CR-7320-2018

RAJIV NARAIN RAINA, J. (ORAL):

This order will dispose of Civil Revision No.2953 of 2016 and Civil Revision No.7320 of 2018, as they broadly relate to the same issue arising out of orders passed by the trial Court.

Petitioner in CR-2953-2016 prays that the order dated 23.2.2016 (Annex P3) passed by the trial Court be set aside and the defendants be permitted to cross-examine the official witnesses PW2 and PW3. The pith and substance of the petition is that the examination-in-

chief of the said witnesses was conducted in 2009 and they were partly examined. Thereafter, the cross-examination was deferred because an application under Order 7 Rule 11 CPC was filed by the defendants which was decided in 2014. After the dismissal of the application under Order 7 Rule 11 CPC, the plaintiff in CR-2953-2016 completed and closed his evidence in the affirmative by tendering certain documents on 28.2.2014. Defendants led and closed their evidence and the case was put up for final hearing. It is said that the arguments were heard by the trial Court but in the meanwhile an application under Order 18 Rule 17 CPC had been filed which was disallowed vide impugned order dated 23.2.2016.

Similarly, the petitioner in CR-7320-2018 also filed an application before the trial Court for further cross-examination of the plaintiff. This application has also been disallowed by the impugned order dated 4.5.2016.

Section 139 of The Indian Evidence Act, 1872, prohibits cross-examination of formal witnesses summoned to produce documents and record unless they are called as a witness. It is not clear from the aforesaid two orders or the material placed on file whether any specific application was made at the time of summoning of PW2 and PW3 to show that they were called as witnesses to depose on the merits of the case or to formally produce documents from the official record. If it was for production for documents, then cross examination should not have been allowed by the trial Court and if it was recorded, in part or in full, it should be read out of consideration as evidence except that the documents tendered will count as evidence by leaving this aspect to the discretion of the trial Court to weigh them as against the issues up for trial and if they are required for

determination of the dispute. Therefore, the opposite party cannot be permitted to cross-examine these formal witnesses, and at least not at this stage when the case has matured for arguments.

As far as the claim in CR-7320-2018 for cross-examination of the plaintiff (plaintiff and defendants are brothers) is concerned, I would normally not have allowed the prayer at this stage. But the fact of the matter is that the parties are brothers disputing over rights in allotment of an industrial plot, then I feel it would serve the ends of doing substantial justice between the parties, and that no rancour is left in any party thinking that justice was not done, one opportunity deserves to be given to the petitioner in CR-7230-2018 to cross examine his brother on a date mutually agreed with the permission of the trial Court. No further opportunity will be given for the purpose.

As a result of the discussion, CR-2953-2016 is dismissed and cross-examination of the official witnesses is declined. However, the documents produced and tendered by the official witnesses PW2 and PW3 shall be read in evidence provided they are public documents of which the Court can always take judicial notice.

In order to clear the way for cross examination of the plaintiff, the impugned order dated 4.5.2016 passed in Civil Revision No.7320 of 2018 is set aside. The case is accordingly remanded to the trial court to give an opportunity of recording the testimony in cross-examination by recalling the witness.

The parties are directed to appear on the date fixed by the trial Court for the limited purpose of further proceedings, as permitted by this order. There will be no further introduction of evidence.

With these directions and observations, both the revisions are disposed of.

8.1.2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No