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

**C.R. No. 7655 of 2018 (O&M)
Date of Decision: 04.02.2020**

Rajeshwar Kumar Khanna

...Petitioner

Vs.

Rakesh Khanna & Ors.

...Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. M.L.Saggar, Sr. Advocate, with
Mr. Sunny Saggar, Advocate, for the petitioner.

Mr. H.K. Aurora, Advocate, for respondent Nos. 1 to 3.

None for respondent No.4.

ALKA SARIN, J (Oral)

The present revision petition has been directed against the order dated 25.09.2018, whereby the request by learned counsel for the plaintiff-petitioner that witness be first cross-examined by defendant No.4 before he finishes his cross-examination, was declined. The plaintiff-petitioner had filed a suit for declaration that Will dated 14.04.2005 alleged to have been executed by Harbans Lal Khanna S/o Sh. Ram Lal Khanna, is illegal, invalid, unnatural and fabricated and not binding on the rights of the plaintiff-petitioner as well as for separate possession by way of partition of house in dispute and for permanent injunction restraining defendant-respondent No.4 from sanctioning

the mutation of the house in dispute and transferring its ownership, on the basis of the alleged Will dated 14.04.2005.

From the perusal of the impugned order it is clear that the plaintiff-petitioner had commenced cross-examination of defendant-respondent No.1. When the matter was adjourned for further cross-examination, a request was made by learned counsel for the plaintiff-petitioner that the remaining cross-examination be deferred till defendant-respondent No.1 had been cross-examined by defendant-respondent No.4. The said request was declined by the Court below. Hence the present revision petition.

Section 138 of the Indian Evidence Act, 1872 (for short, 'the Act'), reads as under:-

“Order of examinations.—Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

As per the above reproduced Section, the right to cross-examination has been given to the adverse party.

In the present case the suit has been preferred by the plaintiff-petitioner primarily against defendant-respondent Nos. 1 to 3 for declaring the Will dated 14.04.2005 as illegal, null and void. The only relief sought against defendant-respondent No.4 is that it be restrained from transferring the property on the basis of the Will. As per Section 138 of the Act, it is for the plaintiff-petitioner to cross-examine defendant-respondent No.1, if he so desires and he cannot insist that defendant-respondent No.4 should cross-examine defendant-respondent No.1 before he concludes his cross-examination.

I, therefore, find no illegality or perversity in the order passed by the trial Court.

Accordingly, the present revision petition is dismissed.

February 04, 2020
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(ALKA SARIN)
JUDGE