

S.No.122

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

CR No.1064 of 2020 (O&M)

Date of Decision:13.02.2020

Kuldeep Singh

.....Petitioner

Vs.

**Karamjit Kaur (since deceased) through her LRs
and others**

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Amit Arora, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present revision has been filed by the petitioner praying for setting aside of the order dated 20.01.2020 passed by the Additional Civil Judge (Senior Division), Tarn Taran; vide which the evidence of the petitioner/ defendant has been closed by order of the Court.

It is contended by counsel for the petitioner that the trial Court has wrongly ordered the closure of the evidence of the petitioner- defendant by recording that numerous opportunities had been granted to the petitioner to lead the evidence. Still further, it is submitted that the plaintiff in the case had played a trick in impleading the person mentioned at Sr. No.1 as defendants in the plaint. Although the petitioner was mentioned at Sr. No.1 by name, yet it was not specified as to how the other persons, mentioned under this Serial No., were being shown as the defendants under his authority. The title of the suit neither described the petitioner as dead nor as granter of the power of attorney or any other authority in favour of the other persons mentioned at Sr. No.1 in the list of the defendants. They were appearing in their own capacities. Therefore, earlier the petitioner was not even in knowledge of the proceedings. Several opportunities to lead the

evidence on behalf of the defendants were wasted before the petitioner came to know of the suit and moved an application for joining the proceedings as defendant in his own capacity. After joining the proceedings, the petitioner had appeared as DW1. He was examined in examination-in-chief on 17.10.2019. However, his cross-examination was deferred without there being any request on behalf of the petitioner. Thereafter, the petitioner could not even be cross-examined. Rather, the case kept on being adjourned because of non-impleadment of the legal representatives of the plaintiff, which is not done even now. Still further, it is submitted that the petitioner-defendant is to produce only the attesting witness and the scribe of the Will in favour of the petitioner and to produce himself for any cross-examination by the plaintiff, if so ordered or desired. Hence, the petitioner deserve to be granted opportunity to lead his evidence.

Having heard the learned counsel for the petitioner and having perused the case file, this Court finds that the trial Court has rightly recorded that the petitioner/ defendant has been granted several opportunities to lead his evidence. However, counsel for the petitioner is also not unjustified in submitting that the entire blame of non-completion of the evidence of the petitioner-defendant cannot be laid at the door of the petitioner; because even the LRs of the plaintiff have not been brought on record so far. In any case, the proceedings of the suit are at the stage of evidence of the defendant only. Therefore, it would not be unjustified if the petitioner is granted one more opportunity to conclude his evidence, however, by putting him to appropriate financial burden.

In view of the above, the impugned order is modified and a

direction is issued to the trial Court to provide one effective opportunity to the petitioner to lead the evidence of the petitioner-defendant, by producing himself, the attesting witness and the scribe of the Will, as prayed for by the petitioner, however, subject to payment of Rs.10,000/- as cost. The cost is ordered to be deposited with the Institute for the Blinds, Sector 26, Chandigarh.

It is further clarified that the trial Court shall permit the petitioner to lead any evidence only after the petitioner produces before that Court the receipt of having deposited the cost, within a period of two weeks from today, as mentioned above.

February 13, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No