

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6655 of 2019 (O&M)

Date of Decision: 3.3.2020

Pappu Singh and others

...Petitioners

Vs.

Narinder Singh

...Respondent

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Karandeep S. Sidhu, Advocate
for the petitioners.

RAJIV NARAIN RAINA, J. (Oral)

1. Learned counsel for the petitioners draws the attention of the Court to paragraph No.3 of the written statement to contend that it is the pleaded case of the defendant No.2 that the plaintiff had in his possession just an affidavit dated 23.11.2006 to base his title to the property-in-suit, whereas it was a loan transaction of R 10,000/- which money the defendant says he borrowed from the plaintiff, with promise to later return it which he says he did; but, the deal has been dishonoured with the institution of the suit claiming the property. This is a matter of evidence and proof and accordingly no opinion is expressed in this order.

2. The challenge in this petition is to the order dated 4.7.2019 passed by the learned Civil Judge, Senior Division, Guruharsahai which is apparently short and non-speaking and deserves to be set aside on that short ground and the case may call for a remand for reconsideration of

the application which prays for allowing the petitioners/defendants to cross-examine PW.1/Narinder Singh and PW.2/Surinder Singh. If this opportunity is denied to the petitioners to cross-examine the respondent/plaintiff in person, then the case is certainly lost and the suit will be allowed without affording reasonable opportunity of cross-examination.

3. That order does not record how many opportunities were availed for the purpose, but now with the order-sheets placed on record through application required by the previous order of this court, they appear to be seven dates falling between 31.1.2019 to 4.7.2019. The defendants do not deserve to be paid a tribute for their protraction but all the same, the suit property is at stake inviting determination of rights over the same so that the dispute is settled on merits.

4. Aggrieved by this order, the defendants/petitioners filed an application for recall of the order which has been dismissed by a speaking order on the ground that the Court has no power to review its own order and the remedy lies before the High Court. The Civil Judge has dismissed the application principally on the ground of maintainability.

5. If the review application was not maintainable, then the trial judge should have been desisted from speaking anything on merits on other matters and should have simply dismissed it on this short point and let the main order stand open to challenge before the High Court in

revisional jurisdiction. This order was passed on 25.9.2019 and feeling aggrieved, this Court has been moved to set it aside and allow the defendants to complete their evidence.

6. After several adjournments were taken to cross-examine the plaintiff, at least prior warning should have been given to them of the consequences of their dithering to cross-examine the two witnesses who were available to face cross-examination. The petitioner could have been put to costs or such other measures could have been taken which if not complied with, then the orders could have followed.

7. In order to secure the ends of justice and to avoid grave and irreversible prejudice to the defense pleas of the petitioner in the civil suit by incomplete testimony of key witnesses, I deem it appropriate to set aside the order without putting the respondents to notice. They would not be prejudiced by this order nor would they be put to unproductive expense to defend the action, if notices were issued to them for appearance in this Court.

8. As a result of the discussion, this petition is allowed. The impugned order is set aside. The application is allowed. The case is remanded with two effective opportunities granted to the defendants to cross-examine PW.1 and PW.2 to their satisfaction. In doing so, they will not seek any adjournment nor would any further opportunity be given to them beyond what has been permitted by this Court.

9. However, this order will remain subject to payment of costs

of ₹ 3,000/- to be paid to the plaintiff on the next date of hearing before the trial Court before the cross-examination starts. If costs are not paid, the impugned order shall stand restored.

(RAJIV NARAIN RAINA)
JUDGE

3.3.2020
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Whether speaking/reasoned: *Yes*
Whether reportable : *Yes/No*