

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-88-2021 (O&M)

Date of Decision: April 20, 2021

SUKHDEV SINGH AND OTHERS

..... PETITIONER(s)

Versus

AVINASH MOHINDRU AND OTHERS

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naveen Batra, Advocate
for the petitioners.

Mr. Sharad Mehra, Advocate
for respondents no.1 and 5.

Mr. Anil Chawla, Advocate
for respondents no.3 and 4.

LISA GILL, J.

Petitioners/plaintiffs seek setting aside of order dated 05.03.2020 (Annexure P-4), passed by the learned Civil Judge (Sr. Division), Amritsar, whereby petitioners have been directed to cross-examine DW9-Kanav Khanna prior to cross-examination by the other defendants.

Brief facts necessary for adjudication of this matter are that petitioners herein have filed a civil suit for declaration and permanent injunction. Petitioners seek a declaration to the effect that they are owners of the suit property as described in the plaint by virtue of two registered sale deeds and on the basis of mutations sanctioned thereafter. It is pleaded that the property in question had been purchased by plaintiffs from one Smt.

Usha. Defendants/respondents no.2 to 4 are pleaded to be tenants in the suit property, the tenancy being created by Purshottam Dass as proprietor of M/s. Ravi Dyeing and Printing and Finishing Works. After death of Purshottam Dass, Smt. Usha is stated to have inherited the property and become its lawful owner.

Written statement on behalf of defendant no.1 Avinash Mohindru and defendant no.5 Sudarshan Sewa Trust through its Chairman Avinash Mohindru was filed, taking a specific stand that Purshottam Dass had donated the property in question to the defendant-Trust and that Smt. Usha had no right to transfer the property. It is further pleaded that a portion of the property was under tenancy of defendants no.2 to 4 and that these defendants are instrumental in institution of the suit against the Trust. Defendant no.2 is stated to be in huge arrears of rent and stated to have contemplated grabbing the property by approaching Smt. Usha daughter of Purshottam Dass and a conspiracy was hatched, thereby Madan Arora, father of Kanav Khanna (DW9) was appointed attorney of Smt. Usha Bhatia. Mutation of the land is alleged to have been secured in favour of Smt. Usha Bhatia and property sold by use of fictitious and collusive sale deeds.

Defendants no.2 to 4 in their separate written statement have taken a stand that they are tenants in the suit property. Tenancy had been created by Purshottam Dass as proprietor of M/s. Ravi Dyeing, Printing and Finishing Works and that the answering defendants have no other option except to treat Smt. Usha as the owner of the property. Allegations of defendant no.1 trying to interfere in the peaceful possession of the tenants

has been raised and it is stated that the said defendants started paying rent to the plaintiffs from December 2008 onwards.

Controversy in the present case revolves around the question as to whether it is the plaintiffs, who have to cross-examine DW9-Kanav Khanna first or the co-defendants. There is no dispute regarding right of the co-defendants to cross-examine the said witness as a stand opposing that of the co-defendants has been taken. The plaintiffs had sought a direction to the co-defendants to first cross-examine the said witness and thereafter the plaintiffs sought liberty to cross-examine. Learned trial Court directed that in the given facts and circumstances, interest of the plaintiffs and defendants no.2 to 4 is similar and against the interest of defendants no.1 and 5, thus plaintiffs were directed to cross-examine DW9 first and thereafter opportunity would be provided to defendants no.1 & 5 to cross-examine the said witness. Aggrieved therefrom, this revision petition has been filed by the plaintiffs.

Learned counsel for the petitioners vehemently argued that learned trial Court has wrongly observed that interest of the plaintiffs and defendant no.2 to 4 is the same. It is submitted that an incorrect interpretation of order 18 Rule 1 CPC has been made by the learned trial Court. Grave injustice, it is submitted, shall be caused to the plaintiffs, in case, defendants no.1 and 5 are not directed to cross-examine the said witness first. It is submitted that burden of proving that defendants no.2 to 4 are tenants of defendant no.5, lies upon the said defendants, therefore, it is for defendant nos. no.1 and 5 to cross-examine the witness DW9, first and not the plaintiffs.

Learned counsel for respondents while refuting the arguments raised, submits that impugned order dated 05.03.2020 has been correctly passed, therefore, this petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It is a settled position that one of the defendants is entitled to cross-examine the co-defendant/witness of co-defendant, in case, he wants to impeach the value of evidence tendered by another defendant. In so far as the order in which cross-examination has to be carried out is not dealt with in Order 18 Rules 1 & 2 CPC, which reads as under:-

‘**1.Right to begin.**—The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2.Statement and production of evidence.—

(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.’

It is useful to refer to the observations of the Gujrat High Court in *Shah Hiralal Himatlal Vs. M.G. Pathak, AIR 1964 Gujrat 26* which read as under:-

‘So far as the defendants go, the question which of the defendants should begin has not been dealt with in Order 18, C. P. Code. But on general principle, if any of the defendants supports the plaintiff in whole or in part, then he should address the Court and lead his evidence first before the other defendants who do not support wholly or in part the plaintiff's case. The order in which defendants lead evidence becomes important only when some of them support the case of the plaintiffs in whole or in part while the others do not. If all the defendants completely oppose the plaintiff's case, then the question of order of leading evidence amongst the defendants is immaterial. It is only when the defendants are divided into two groups, one group consisting of the defendants supporting the plaintiff's case in part and the other group consisting of defendants, who do not support the plaintiff's case in any part that the question of order of leading evidence becomes important. In such cases among defendants the order of leading evidence should be as follows:

- (1) Those defendants who fully support the case of the plaintiff.*
- (2) Those defendants who partly support the case of the plaintiff.*
- (3) Those defendants who do not support the case of the plaintiff in any part.’*

Single Bench of High Court of Delhi in the case of **Mrs. Sarabjit Singh Vs. Mr. Gurinder Singh Sandhu and others ILR (2011)1 Delhi 624** while considering Hira Lal's case (supra) observed that

“ I have gone through the aforesaid three authorities and I find myself to be in agreement with the reasoning given by the Bombay High Court as well as the Gujarat High Court, so far as the order in which the cross examination of the plaintiff's witnesses is to be conducted. The reason for such an order is not far to seek. The Hiralal's case has rightly classified the defendants into three categories - firstly those who are supporting the case of the plaintiff fully, secondly those who are partially supporting the case of the plaintiff and thirdly those who are not at all supporting the case of the plaintiff. The classification of the defendants in the aforesaid three categories must regulate the cross examination of the plaintiff's witness. It may be pertinent here to mention that [Section 137](#) of the Evidence Act also lays down that when a witness enters into a witness box, he will be first subjected to examination-in-chief, then cross examination and thereafter re-examination.

The [Evidence Act](#) clearly lays down that the scope of cross examination is much wider as it permits a party to cross- examine the witness even regarding his character in order to impeach his credibility. Leading questions which are suggestive of answer can also be asked to the witness. Therefore, in such a contingency where the scope of cross examination is much wider and gives better leeway to the defendant, it cannot be permitted by a party who either fully or partially supports the case of the plaintiff to cross examine witness after the contesting party has done. If this is permitted to be done, then it will greatly prejudice the rights of the parties who are contesting the claim of the plaintiff. I therefore find myself in agreement with the judgment of Hiralal's case that the party which supports the case of the plaintiff partially or fully must cross examine the witness of the plaintiff first. Accordingly, so far as the facts of the present case are concerned, the defendants No.3 and 4 are supporting the case of the plaintiff both partially and fully respectively and therefore they must first cross examine the witness of the plaintiff first rather than the defendant No.1 who is contesting the claim of the plaintiff. I accordingly allow the contention of the defendant No.1 directing defendant No.3 and

other defendants to cross examine the plaintiff's witness in the first instance before the defendant No.1 undertakes the cross examination. However, expression of any opinion hereinbefore shall not be deemed to be an expression on the merits of the case."

A coordinate Bench of this Court in ***Pritpal Singh Aurora Vs. Rajinder Singh Aurora 2009(3) RCR (Civil) 574***, while dealing with a situation where a defendant supported the case of the plaintiff, held that in order to safeguard the interest of a co-defendant, cross examination of the supporting defendant be carried out by the plaintiff and then by the contesting co-defendant.

In the present case, learned trial Court has rightly directed the plaintiffs to first cross-examine witness DW9-Kanav Khanna and thereafter, opportunity provided to defendants no.1 and 5 to cross-examine the said witness. Though, learned counsel for the petitioners points out to the pleadings in the plaint alleging collusion between the tenants-defendants no.2 to 4 and defendants no.1 & 5, he is unable to deny that defendants no.2 to 4 in their written statement have specifically stated that they are paying rent to the plaintiffs since December 2008 onwards and did not show any hesitation in treating the plaintiffs as landlords and owners of the suit property. Plaintiffs/petitioners undoubtedly seek a declaration that they are owners of the property, which is contested by defendants no.1 & 5.

Keeping in view the facts and circumstances of the case, I do not find any illegality, infirmity or perversity in the impugned order dated 05.03.2020 (Annexure P-4), passed by the learned Civil Judge (Sr. Division), Amritsar, which calls for any interference in exercise of revisional jurisdiction.

No other argument was addressed.

This revision petition is accordingly dismissed.

April 20, 2021
Sunil

(LISA GILL)
JUDGE

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