

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision Petition No. 1360 of 2021
Gunwant Kaur
... Petitioner(s)
Versus

Karamjit Kaur Grewal and Others
... Respondent(s)

AND

2. Civil Revision Petition No. 1395 of 2021
Gunwant Kaur
... Petitioner(s)
Versus

Sarabjit Singh (now deceased) through his LR's and Others
... Respondent(s)

DATE OF DECISION: 17.08.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. V.K.Jindal, Senior Advocate
with Mr. Akshay Jindal, Advocate
for the petitioner(s).

Mr. K.S.Sidhu, Senior Advocate
with Mr. P.S.Sullar, Advocate
for the contesting respondents.

Anil Kshetarpal, J.

1. Through this order, two connected civil revision petitions (C.R. No. 1360 and 1395 of 2021) shall stand disposed of.

2. The petitioner (Gunwant Kaur) is common in both the revision petitions. She is the plaintiff in one suit and the defendant in another suit. She is the widow of late S. Amarjit Singh. At the time of hearing, the learned counsel representing the respondent has admitted that she stands acquitted of criminal charge of murdering her husband (Late S. Amarjit

Singh). She claims that she has exclusively succeeded to the property left

behind by her husband being his widow as also on the basis of testamentary disposition dated 04.02.2004. The couple had no children. In the civil suit (*Karamjit Kaur Grewal and Another v. Gunwant Kaur and Others*), it is claimed by the plaintiffs that they, being parents of late S. Amarjit Singh, (Karamjit Kaur and her husband claim that they adopted S. Amarjit Singh) are entitled to inherit the property of their deceased son and the defendant-Gunwant Kaur, being his murderer, is not entitled for the inheritance.

3. During the pendency of both the suits, the petitioner filed an application under Order XVIII Rule 3A CPC seeking permission from the Court to appear as a witness after examination of the other witnesses. It has been asserted that the original Will, executed by late S. Amarjit Singh, is lying in the office of the Assistant Collector Ist Grade, Patiala, which has been summoned. She has also summoned the record from the Judicial Record Room Patiala, where the record pertaining to purchase of LIC policy in her name is lying. She has also summoned the attesting witnesses of the Will dated 04.02.2004. Per contra, the opposite party in both the suits has contested the application on the ground with the plea that the main object of Order XVIII Rule 3A CPC cannot be permitted to be defeated as she would subsequently fill in the blanks or lacuna in the evidence of her witnesses.

4. The Court below, while rejecting the prayer, has observed that the applicant can depose generally about the Will and the witnesses can be summoned along with the original record simultaneously. The Court has found that the plaintiff has failed to make out a ground to deviate from the normal practice of examining the parties to suit at the first instance.

their able assistance, perused the paper books.

6. Before proceeding further, it is appropriate to notice the language of Rule 3A of Order XVIII CPC which was inserted by CPC (Amendment) Act 104 of 1976 w.e.f. 01.02.1977:-

“3A. Party to appear before other witnesses.—Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage”.

7. It is apparent from the reading of the provision that where a party himself/herself wishes to appear as a witness, ordinarily he/she/it should so appear before any other witness, unless the Court, for the reasons to be recorded, permits him or her to appear at a later stage. Thus, normal Rule is that the party, who wishes to appear as a witness, should so appear before any other witness. However, there is an enabling power with the Court to permit deviation from the general rule, for the reasons to be recorded. This provision came up for interpretation before the Full Bench in ***The Amritsar Improvement Trust v. Ishri Devi* 1979 Punjab Law Reporter 354**. Keeping in mind the fact that the procedure is the ultimate handmaid of justice and not its mistress, it was held that such provision has to be liberally construed. After recalling the observations of **Krishna Iyer, J.** in ***State of Punjab v. Shyam Lal Murari and Others* AIR 1976 Supreme Court 1177**, the Full Bench went on to hold that such procedure is directory and the permission can be granted even at a later stage. However, it was cautioned

disregarded.

8. Keeping in view the aforesaid observations, let us examine the facts of the present case. The petitioner prayed for her examination at a later stage on the ground that she has already summoned the attesting witnesses and also summoned the record from the office of the Assistant Collector Ist Grade where the original Will is lying as also the Judicial Record from the Court so as to ensure that when she deposes in the Court, the entire evidence is available. No doubt, the Court has observed that this can be done simultaneously. However, it is easier said than done. Sometimes, the summons sent to the witnesses are not served. On other occasion, the officials do not bring the summoned record. It has been observed that there is delay in the production of the record by the officials. Furthermore, it is well settled that rules of procedure are to advance the cause of justice rather than using them for creating obstruction in the flow of justice. Learned senior counsel representing the respondent contends that if the petitioner is permitted to be examined at a later stage, she will fill the lacuna/deficiencies. In the considered view of this Court, this argument does not have any substance. The party is given opportunity to lead evidence in order to prove its case. There is no question of filling in the lacuna. Each party is required to prove its case in accordance with the procedure laid down by the law.

9. Learned counsel representing the respondent has thoroughly relied upon the judgment passed in *Jasvir Singh and Others v. Jaspal Singh* 2015(3) Punjab Law Reporter 130 to contend that the Court, in the

followed. This Bench has carefully read the judgment. In the aforesaid case, when the plaintiff was leading evidence, the defendant moved an application under the proviso to Order XVII Rule 1, claiming that the case could not be adjourned for more than three times for the evidence of the party to the suit. In that context, the Court observed that discipline must be introduced at the trial and the statutory provision should be strictly followed. The Court itself noted that even if prior permission is not taken before the commencement of the trial, it is required to be sought at least when the party is examined. Hence, the aforesaid judgment has no applicability because in the present case, the prior permission has been sought. Learned counsel has further relied upon the judgment in *Sunil Nagpal v. Indu 2019(1) ICC 347*. In the aforesaid case, an application for permission to lead additional evidence was dismissed. The defendant wanted to examine himself in additional evidence when the trial of the case was at the fag end when even the rebuttal evidence was closed. The Court, while rejecting the prayer, held that the defendant was required to examine himself as his own witness at the first instance before the other witnesses. Hence, the aforesaid judgment also does not advance the case of the respondent.

10. It would be noted here that the petitioner herein is undisputedly the widow of late S. Amarjit Singh. Even in the absence of the Will, she is one of the Class-I heir. Keeping in view the aforesaid facts, particularly when the original Will is not the part of the Court record and has been requisitioned, this Bench does not find any reason to insist the petitioner to appear first of all.

Keeping in view the aforesaid facts, the application is allowed.

The petitioner is permitted to appear subsequently. However, since the suit has remained pending for quite some time, consequently, the trial Court is requested to take up the case on a priority basis and make sincere endeavours for the expeditious disposal of the case thereof. In the facts of this case, it is considered appropriate to request the trial court to explore the possibility of the recording the cross examination of the important witnesses by the Presiding Judge herself or under her watchful eyes.

12. With these observations, both the revision petitions are allowed.

**(Anil Kshetarpal)
Judge**

August 17, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No