

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

117

CR-1240-2018

Date of decision: 17.10.2022

SMT. SAVITRI

..Petitioner

Versus

RAJBALA

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwar Abhay Singh, Advocate
for the petitioner.

Mr. Shubham Kashyap, Advocate
for Mr. Sandeep Singal, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The dispute with regard to the inheritance of the property of late Sh. Attar Singh is pending before the trial Court. Smt. Savitri Devi, who is the sister of late Sh. Attar Singh, has propounded a registered Will executed by him on 26.01.2002, bequeathing the suit property in her favour, whereas, the remaining property is stated to have been bequeathed in favour of his widow. In order to prove the Will, Sh. Har Narain Singh, the attesting witness to the Will, was examined as DW-5. In examination-in-chief, he supported the Will and on his statement, the Will was taken on record as Ex.D-206. However, during the cross-examination, he stated as under:-

“Before his death, I had met him lastly in the year 1988.”

2. The defendant immediately filed an application for permission to re-examine the witness for clarification as the aforesaid statement was against the record because the registered Will of late Sh. Attar Singh propounded by the defendants is dated 26.01.2002. The Court has dismissed the application on the ground that the re-examination cannot be permitted to fill up an omission or *lacuna*.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. Section 137 and 138 of the Evidence Act, 1872, makes a provision for examination of the witness, which reads as under:-

“137. Examination-in-chief. — The examination of witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. — The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination. — The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. 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. ”

5. Re-examination is an integral part of the scheme of examination of a witness embodied in the Indian Evidence Act, 1872, and the same is permitted particularly when there is an ambiguity or a clarification is required from the witness. Sh. Har Narain Singh is an important witness. The burden to prove the Will is upon the propounder, who is required to prove the same in accordance with Section 68 of the Evidence Act, 1872. The Will is a solemn document, which is required to be proved by examining its attesting witnesses. Even a slight variation or ambiguity in the deposition unless clarified may reverse the result of the case. It is well

established that the

CR-1240-2018

-3-

rules of procedure are a hand maid of justice. This Court is of the view that the trial Court has taken a very myopic view of the matter. It is not a question of filling up the *lacuna*, it is a question of clarification of a particular sentence which has come in cross-examination. In fact, this is the very purpose of making a provision for the re-examination of the witness in the Indian Evidence Act, 1872. Though, it is settled law that the deposition has to be read as a whole and a particular sentence cannot be read in exclusion of the other, however, where the witness is available and the law permits such course, it is appropriate to seek his clarification.

6. Consequently, the order dated 09.02.2018, is set aside.

7. The trial Court is requested to summon the witness in order to give an opportunity to the petitioner to seek clarification. Needless to observe that the plaintiff shall also be granted an opportunity to further cross-examine the witness.

8. With these observations, the revision petition is disposed of.

9. All the pending miscellaneous applications, if any, are also disposed of.

October 17th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>