

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 545 of 2019

Date of Decision: 30.08.2022

Gurmail Singh
... Petitioner(s)

Versus

Jeet Kaur and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Jagjit Singh, Advocate
for the petitioner(s).

Mr. Kulwinder Singh, Advocate
for Mr. Kanwal S. Walia, Advocate
for the respondent No.2 to 5.

Anil Kshetarpal, J.

1. The dispute, in the present revision petition, is with respect to the order in which the plaintiff and the defendant No.1, should cross-examine the defendant No.2. A small pedigree table is being drawn hereunder in order to understand the relationship between the parties:-

Jeet Singh (Died on 01.03.2022)					
Jeet Kaur (Widow)					
Bhajan Kaur (Plaintiff No.1)	Jaswinder Kaur (Plaintiff No.2)	Balwinder Kaur (Plaintiff No.4)	Gurminder Kaur (Plaintiff No.5)	Gurmail Singh (Defendant No.1)	Surinder Singh (Defendant No.2)

2. Sh. Jeet Singh, predecessor-in-interest of the parties, died on 01.03.2000. He is alleged to have executed a Will bequeathing his property in favour of his two sons, namely Sh.Gurmail Singh (defendant No.1) and

Sh.Surinder Singh (defendant No.2). The widow and daughters of late Sh.Jeet Singh have filed a suit for decree of declaration. The defendant No.1 while filing the written statement, claims that the suit is a result of collusion between the plaintiffs and the defendant No.2 (Sh.Surinder Singh). The defendant No.2, while filing the written statement, has indirectly admitted the case of the plaintiffs. When the case advanced to the stage of defendants' evidence, the defendant No.1 filed an application under Order XVIII Rule 2 Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") to direct the defendant No.2 to first lead evidence as he is indirectly supporting the case of the plaintiffs. The Court allowed the same. Thereafter, the defendant No.2 filed an application for directing the plaintiffs to cross-examine the defendant No.2, first in point of time, which has been dismissed by the Court

3. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book.

4. The learned counsel representing the defendant No.1 contends that the defendant No.2 has practically admitted the suit filed by the plaintiffs, therefore, the defendant No.2, who is the contesting defendant, should be granted an opportunity to cross-examine the defendant No.2, at later point in time, so that the defendant No.2 or the plaintiffs does not play any mischief. On the other hand, the learned counsel representing the plaintiffs contends that the defendant No.1 and 2 are the beneficiaries of the Will, therefore, they are identically situated.

5. In the present case, most of the assertions made in the plaint have been admitted by the defendant No.2 while filing the written statement.

Thus, there is a conflict of interest between the defendant No.1 and 2. In

such circumstances, if the plaintiff is permitted to cross-examine the defendant No.2 at the end, then, the prejudice is likely to be caused to the interest of defendant No.1 (petitioner herein). In such circumstances, it is considered appropriate to direct the plaintiffs to cross-examine the defendant No.2 at the first instance and thereafter, grant an opportunity to the defendant No.1.

6. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

August 30, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No