

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.262

CR No.6101 of 2018 (O&M)

Date of Decision: 14.11.2022

Mahender

.... Petitioner

Versus

Prem Wati and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. D.K.Tuteja, Advocate
for the petitioner.

Mr. Arun Nehra, Advocate and
Mr. Sant Kashyap, Advocate
for respondents No.1 and 2.

TRIBHUVAN DAHIYA, J. (ORAL)

This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 16.08.2018 (Annexure P-1) passed by trial Court whereby petitioner/defendant's application for declaring DW4-Vijay Kumar as hostile and allowing his cross examination by the defendant, has been declined.

2. The facts of the case in brief are, Dhanpal father of plaintiff/respondent No.1 and husband of respondent No.2 had no son and had only one daughter Prem Wati, i.e., plaintiff/respondent No.1. Dhanpal was owner of land measuring 31 *kanal* situated within the revenue estate of Village Sundana, Tehsil and District Rohtak. The said Dhanpal got his land partitioned by decree dated 24.02.1992, and he was allotted a separate portion of the aforesaid land. His nephews Ishwar, Mahender and Chand, sons of Dariya (defendants in the present suit) filed a civil suit No.960 of

1992 and obtained a decree dated 21.11.1992 from the Court of Sub Judge First Class, Rohtak, whereby the entire land owned by Dhanpal was transferred in their favour. On coming to know about this decree dated 21.11.1992, Dhanpal filed a civil suit No.148 dated 10.02.1995 (first suit) to challenge the same being illegal, null and void. Another civil suit No.148-A of 1995 (second suit) was filed by the aforesaid three nephews of Dhanpal namely, Ishwar, Mahender and Chand for declaration that they were owners of the land in question as per decree dated 21.11.1992.

3. Both the suits were clubbed and were decided by a common judgment dated 30.03.2007 (Annexure A-1). Vide this judgment, the first suit filed by Dhanpal was decreed and he was declared owner of the suit land by holding the decree dated 21.11.1992 as null and void. The defendants of the first suit were restrained from alienating or creating any charge over the suit land. By the same judgment and decree dated 30.03.2007, the second suit was partly allowed whereby the claim of ownership of the three nephews based on the decree dated 21.11.1992 was dismissed, but the plaintiffs, i.e., legal heirs of Dhanpal, were restrained from dispossessing the three nephews from the suit land except in due course of law. Based on the decree dated 30.03.2007, mutation of ownership no.3677 was entered in the names of the respondents/plaintiffs on 13.04.2007, and the same was sanctioned by the competent authority on 18.04.2007. In this regard, a notice dated 16.04.2007 (Annexure P-2) was issued by the petitioner/defendant. Thereupon, an order dated 20.06.2007 (Annexure P-3) was passed by District Revenue Officer, Rohtak to the effect that the mutation No.3677 had been undertaken hurriedly in the absence of

any Court order which was wrong, so the above said mutation was necessary to be sent for review.

4. The relevant paragraphs 62 and 63 of the judgment and decree dated 30.03.2007 read as under:

62. In view of result on above mentioned issues, civil suit bearing no 148 of 1995 titled 'Dhanpal versus Ishwar & Others' succeeds and is hereby decreed with costs. The civil suit nos 148/1995 titled Dhanpal (now deceased) versus Ishwar & others stands decreed and to the effect that the plaintiff Dhanpal now represented by his legal heirs i.e. Premati, his daughter and Smt Rajan, his widow are owners of the suit property mentioned in para no 2 of the plaint of civil suit bearing no 148 of 1995. The defendants Ishwar & Others of civil suit bearing no 148 of 1995 being without any title relating to the suit property are hereby permanently restrained from alienating it or creating any charge over it in any form.

63. Civil suit bearing no 148A of 1995 titled Ishwar & Others Vs Dhanpal stands partly dismissed and partly decreed. The claim of ownership of the plaintiffs Ishwar & Others of civil suit no 148A/1995 stands dismissed while claim relating to the possession of suit property stands decreed in favour of plaintiffs Iswhar & Others. The defendants of civil suit no 148A of 1995 are hereby restrained from dispossessing the plaintiffs of civil suit no 148A/1995 except in due course of law. However the plaintiff of civil suit no 148/1995 shall be at liberty to secure the possession of suit property in due course of law. There is no order as to costs in civil suit no 148A/1995. Decree sheet be prepared accordingly and file be consigned to record room after due compliance.

5. Appeal against this judgment was dismissed by lower appellate Court on 22.12.2009, and the regular second appeal was also dismissed by this Court vide judgment dated 18.09.2015 (Annexure A-2).

6. Based on the judgment and decree dated 30.03.2007, which attained finality upto this Court, a suit for possession was filed by the respondents/plaintiffs (legal heirs of Dhanpal) to obtain possession of the suit land from the three nephews, namely, Ishwar, Mahender and Chand/defendants. It is during the pendency of this suit for possession that the impugned order has been passed. The witness DW4-Vijay Kumar, Patwari, was examined before the trial Court. After that, the petitioner/defendant moved the instant application (Annexure P-5) for declaring the witness hostile and granting permission for his cross examination, on the plea that DW4-Vijay Kumar did not give correct answers to the questions which were put to him during cross examination regarding order dated 20.06.2007 and notice dated 16.04.2007. It was also pleaded, it appeared that the witness was hiding truth in collusion with the plaintiffs.

7. Therefore, cross examination of defendant's witness by the defendant himself, after declaring him hostile, has been sought by referring to a notice said to have been issued on defendant's behalf dated 16.04.2007 and an order dated 20.06.2007 regarding review of the same. The facts of the case make it apparent that the said mutation of ownership was entered on the basis of judgment and decree dated 30.03.2007 declaring the respondents/plaintiffs to be owners of the land in question. Appeal against the same was dismissed by lower appellate Court on 22.12.2019, and regular second appeal by this Court on 18.09.2015. Therefore, any notice or report

questioning the same is inconsequential, since a decree on the basis of which the said mutation has been entered in favour of the respondents/plaintiffs has attained finality. The other ground of seeking cross examination of the witness is the perceived collusion between the witness and the plaintiffs. This assumption cannot be a basis to declare a witness hostile and/or permit him to be cross-examined by the petitioner/defendant himself. Besides, there is no material on record which could even *prima facie* show any such collusion between the two. The respondents/plaintiffs, despite having been declared owners of the suit land by decree dated 30.03.2007, have not been able to get possession of the same, and the suit for possession filed by them in the year 2007 remains pending. The instant application appears to have been filed by the petitioner/defendant for obvious reasons, as an attempt to prolong the trial and prevent the plaintiffs from taking possession of the suit land despite being owners. It deserves dismissal .

8. In view of the above, there is no ground to interfere with the impugned order passed by trial Court dismissing the application.

9. Petition stands dismissed.

10. The observations made herein above are only to adjudicate the instant petition, and will have no bearing on the merits of the suit.

11. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

14.11.2022
Maninder