

206

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

CR-6883-2015**Date of Decision :07.12.2022****SATNAM KAUR****..... PETITIONER****VS****SUKHJIT SINGH AND ORS..****..... RESPONDENTS****CORAM :HON'BLE MR.JUSTICE ALOK JAIN**

Present :- Mr. J.S. Lalli, Advocate and
Mr. Kavinder S. Chhibber, Advocate for the petitioner.

Mr. R.K.S Brar, Advocate and
Mr. A.P. Kaushal, Advocate for respondents No.2 and 5.

ALOK JAIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the Order dated 07.09.2015 (Annexure P-9), passed by the Civil Judge (Junior Division), Jalandhar, whereby the application under Order 18 Rule 17 of Code of Civil Procedure, 1908, filed by the petitioner/defendant No.1 seeking recalling all the witnesses of the plaintiff for cross examination has been dismissed.

Counsel for the petitioner submits that the respondents had filed the suit for declaration challenging the order passed by Tehsildar-cum-AC, 1st Grade, Jalandhar-I to be wrong and illegal and also not binding upon the joint land held by the parties. The order of partition and further proceedings were sought to be stayed along with other reliefs. He further submits that the petitioner was defendant No.1 and had duly filed the written statement and had raised the challenge to the averments in the said suit, however, stating therein that the partition proceedings had been filed by the grandmother of the plaintiff and the Revenue Court allowed the said application and moreso, the

same stood executed as well as implemented. Despite the above serious preliminary objections, the counsel engaged by the petitioner did not pursue the matter diligently, especially, at the stage of evidence.

In the light of the above, the counsel for the petitioner, at the outset, submits that he does not wish to press the merits of the case but has argued that there was some disharmony with the counsel engaged by defendant No.1 for the reason best known to him. Despite being given opportunity to cross-examine the witnesses, not even a single question was put by the counsel, which is evident from the order dated 20.08.2014 with regard to the cross-examination of PW-1. The same was the fate with the cross-examination of PW-2. He further submits that despite their being a categorical averment by PW-1 in his testimony to the extent that the order of partition was got passed by defendant No.1 at the back of all the co-sharers recorded in the *Jamabandi* by way of misrepresentation. Counsel engaged by defendant No.1 should have cross-examined the above said witnesses.

Counsel for the respondents has vehemently opposed the contentions raised by the counsel for the petitioner and has submitted that due opportunity was given to the petitioner, and hence, cannot be permitted now, at this stage, to re-open the evidence. He submits that the petitioner is debarred by her act and conduct. Moreover, the counsel for the respondents has vehemently opposed the said arguments and has submitted that it is a case where defendant has not filed any complaint or taken any action against the said Advocate and rather the Court below has recorded that the power of attorney of the said Advocate was still valid and in existence on the said date, therefore, the allegation of any connivance of the plaintiff with the counsel for defendant No.1 is superficial and baseless.

After hearing both the counsel for the parties at length, I am of the view that the matter is pending for the last seven years and the final order was stayed by this Court vide interim order dated 15.10.2015.

That procedures are handmade of justice and the substantial justice should be the paramount consideration and therefore this Court taking a lenient view in the light of the fact that, it would be in the larger interest of substantial justice to dispose off the present petition. The ends of justice would be served if the petitioner is granted two effective opportunities to cross-examine PW1 and PW2 on the date fixed and on any one further date to be fixed by the Trial Court and the respondent is compensated by imposition of cost.

Accordingly, the impugned order dated 07.09.2015 (Annexure P-9) is set aside and the petitioner is granted two effective opportunities to cross-examine PW1 and PW2 on 21.12.2022 i.e. the date already fixed and/or on any one date after 21.12.2022, in case, the said witnesses fail to appear on the said date. This liberty to is subject to payment of cost of Rs.10,000/- to be paid to the plaintiffs-respondents on 21.12.2022.

The present revision petition is disposed off in above terms.

(ALOK JAIN)
JUDGE

07.12.2022
manju

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No