

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

CR-6669-2019

Date of decision : 15.07.2022

Mohan Lal

...Petitioner

Vs.

Muni Mundolia

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. K.B.Raheja, Advocate for the petitioner.

MANOJ BAJAJ, J.

Mohan Lal (petitioner) has filed this revision petition to challenge the order dated 03.09.2019 (Annexure P-4) passed by Civil Judge (Junior Division), Faridkot, whereby his application for not permitting the respondent (counter-claimant) to appear as her own witness, was dismissed.

The facts in brief leading to the petition are that Mohan Lal (plaintiff) brought a suit in respect of house measuring 500 square yards (16/400 share) comprised in khasra Nos.6179/2/19-4, 6179/1/0-16, khewat No.195, khatauni No.402, 403 Agwar Dod, raising the issue of title against defendant-Muni Mundolia, who while contesting the same, filed an application under Order 7 Rule 11 read with Section 151 CPC, Sections 4 (1) and 4 (2) Prohibition of Benami Property Transaction Act, 1988, had also filed a counter claim seeking possession of the suit property. The plaint filed by Mohan Lal was rejected vide order dated 22.08.2018, and now counter-claim set up by respondent is pending adjudication.

Muni Mundolia (counter-claimant) being resident of Austria had executed a special power of attorney dated 01.05.2016 in favour of

Parkash Chand son of Inder Raj Mal and Rajinder Kumar son of Hanuman Ram authorizing them to pursue the case relating to the suit property, which was purchased by her through sale deed No.299 dated 01.05.2016. After completion of pleadings of the parties and framing of issues, the evidence on behalf of Muni Mundolia was adduced and her power of attorney, namely, Rajinder Kumar tendered his affidavit dated 08.07.2019 (PW-3/B) in examination-in-chief.

Subsequently, Muni Mundolia arrived in India in August, 2019, and she also tendered her own affidavit dated 28.08.2019 in examination-in-chief and on the same day, Mohan Lal moved an application with a prayer to prohibit Muni Mundolia to appear as her own witness, because her attorney Rajinder Kumar already stood examined. The application was contested by respondent, and Civil Judge (Junior Division), Faridkot vide impugned order dated 03.09.2019 dismissed the application. Hence this revision petition.

Learned counsel for the petitioner has argued that the provisions contained in Order XVIII Rule 3-A Code of Civil Procedure, 1908 are clear and specific, wherein it is contemplated that if, a party wishes to appear as a witness, then the said party is to be examined before examination of any other witness, and in the present case, it is the case of respondent herself that through power of attorney she had authorized Rajinder Kumar to pursue this case, who stands examined, so the respondent cannot appear as a witness. According to Mr. Raheja, learned counsel, the examination of respondent as witness is against the provisions of law, and is meant to fill up the lacunae, but the Civil Judge (Junior Division), Faridkot has not examined the facts

and circumstances of the case carefully, who wrongly dismissed the application. In support of his argument, learned counsel has relied upon “Ravinder Kaur Vs. Amit Jain and another”, 2015 (86)R.C.R. (Civil) 318, “Gurmeet Singh and another Vs. Charanjit Kaur and another”, 2016 (3) PLR 49, “Baldev Singh Vs. M/s Satya Industries Pvt Ltd and others”, 2015 (17) R.C.R. (Civil) 157, judgments passed by Hon'ble Madras High Court in “Bhanumathy Vs. M.Venkatesan and others”, 1989 AIR (Madras) 239 and “M.Kumar Vs. S.Subbiah Kone and Shiek Mohammad”, 2008 (7) R.C.R. (Civil) 381 and judgment passed by Hon'ble Gujarat High Court in “Chandubhai Lavjibhai Lunagariya Vs. Ramnikbhai Nathabhai Sardhara, 2016 (4) GLR 3273. He prays that the impugned order deserves to be set aside.

After hearing the learned counsel and considering the facts of this case, this Court is of the opinion that examination of a party as his/her own witness in a litigation is of prime importance, as such a witness is expected to produce the best evidence in order to discharge the onus. No doubt, ordinarily in civil suit, a party can be represented by validly appointed power of attorney, but even if, the said attorney has been examined, as a witness this alone would not be sufficient ground to prohibit the party to appear as his/her witness in the suit.

The judgment in *Ravinder Kaur's* case (supra), deals with the issue of additional evidence, as party to the suit never examined itself as a witness and the attorney stood examined, but subsequently, the attorney sought permission to examine the party by way of additional evidence and

the same was declined on the ground that the said party to the suit has not moved this application. So, this judgment is not applicable to the facts of the present case. No doubt in *Bhanumati's case* (supra), in a suit for partition plaintiff's husband acting as attorney was examined, who did not claim any right or share against defendant and later, wife was also prohibited to be examined as witness in view of the Rule 3-A, but this judgment is based upon appreciation of facts of the case, and there is no interpretation of Order 18 Rule 3-A CPC, therefore, it cannot be treated as a binding precedent. In *Chandubhai Lavjibhai Lunagariya's case* (supra), the attorney stood examined on behalf of the plaintiff, but in order to elaborate the cross-examination, permission was sought to examine the plaintiff and the said prayer was rejected, therefore, this judgment is also not applicable in the present case. Similarly, the other judgments relied upon are strictly not applicable to the facts and circumstances of this case.

At this stage, it would be appropriate to examine Order XVIII Rule 3-A Code of Civil Procedure, 1908 :-

“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”.

A reading of the above clearly shows that this rule lays down the order of sequence for examination of witnesses on behalf of the party to suit and the expression that the party must be examined before any other witness is examined is not an absolute rule, as it contains an exception also,

whereby the Court for the reasons to be recorded may grant leave to the litigant by allowing him/her to appear as witness at a later stage. Thus, it is clear that the above rule is directory in nature and cannot be construed as mandatory. Further, before altering the sequence contemplated by this rule, the party to the suit is required to give a justifiable explanation, as to why it could not be examined at the first instance. In case, the explanation is based upon sufficient reason ordinarily the permission is granted.

Further, a perusal of the impugned order reveals that the Court has considered the relevant facts, background as well as the explanation offered by the respondents for not examining her in the beginning and rightly proceeded to decline the application filed by the petitioner. Muni Mundolia specifically pleaded in her reply to the application that she arrived in India on 24.08.2019 and immediately contacted her counsel for appearing as witness and filed her affidavit on 28.08.2019 (Annexure P-2) and the power of attorney of respondent was examined before the respondent's arrival. This provision no-where contemplates that if, the attorney of a party to the suit has been examined as a witness, the party cannot appear as a witness at a subsequent stage.

Resultantly, this Court has no hesitation in holding that the impugned order does not suffer from any illegality or impropriety. Consequently, no case is made out for interference.

Dismissed.

15.07.2022

vanita

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No