

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

CR-5265-2022(O&M)

Date of decision:-7.12.2022

Puran Ram

...Petitioner

Versus

Dalip Kumar (died) through LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

H.S. MADAAN, J.

1. By way of filing a civil suit titled 'Puran Ram and others Versus Dalip Kumar (died) through LRs and others' the plaintiffs sought a declaration that notwithstanding anything contained contrary to the plaintiffs in the revenue record or other record of title, the plaintiffs are owners in possession of land measuring 241 kanals 7 marlas fully detailed in the head-note of the plaint situated in the revenue estate of village Wriyam Khera, Tehsil Abohar, District Fazilka and that the judgment and decree dated 23.2.1991 in case titled 'Subhash Versus Mata Deen' regarding land measuring 45 kanals 14 marlas passed by Sub Judge, Fazilka in favour of defendant No.3 and judgment and decree dated 3.3.1994 regarding the land measuring 150 kanals 7 marlas passed by Sub Judge, Ist Class, Abohar are illegal, null and void and such decrees had been obtained by playing fraud with Mata Deen; the plaintiffs are not bound by any such judgment passed and craved for grant of relief of permanent injunction restraining the defendants from alienating the suit

property measuring 241 kanals 7 marlas to anybody else and further restraining defendants not to interfere in the peaceful possession of the plaintiffs.

2. On notice, the defendants appeared and filed written statement. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence. The plaintiffs had completed their evidence and thereafter the case was fixed for evidence of the defendants. Statement of Sawarmal, Tehsildar, Shri Ganganagar (now ADPS) was recorded partly by way of video conferencing; After his examination-in-chief was completed, the plaintiffs filed an application for issuance of direction to defendant witness Sawar Mal to appear in person in the Court along with the record i.e. his specimen signatures, his joining record along with his signature marked by him at the time of his joining at Sri Ganganagar, Rajasthan, record of his signatures marked on the original document at the time of registration of the documents being Sub Registrar at Sri Ganganagar i.e. sale deed etc. during the period he remained on leave since October 2015 to December 2015 and the official letter/circular issued by the Government of Rajasthan to mark digital signatures on the official record and the record of his digital signatures marked on the registered documents during his service tenure at Sri Ganganagar, Rajasthan.

3. The statement of witness Sawar Mal was agreed to be recorded through video conference as per consent given by counsel for the parties. Examination-in-chief of DW Sawar Mal was recorded. The witness is said to have denied his signatures on public documents

produced on the file including the death certificate of Mata Deen son of Gheesram, resident of village Waryam Khera. The plaintiff prayed that the witness be asked to appear in the Court in person so that he can be confronted with his signatures on original documents etc. and to take specimen signatures of the witness including the digital signatures.

4. The application was opposed by the defendants contending that the same is not maintainable; the entire record is already submitted by Sawar Mal on the judicial file; he has specifically denied his signatures on the documents in question and witness was also cross-examined by counsel for the plaintiff in another case titled 'Manjeet Versus Kasturi' pending in the Court of JMIC, Abohar, therefore no ground is made out for calling the witness in the Court in person along with the record mentioned in the application. The defendants prayed for dismissal of the application.

5. After hearing the counsel for the parties and going through the record, the trial Court had observed that witness Sawar Mal had appeared through video conferencing facility on 17.8.2022 and during his examination in chief, he had admitted his signatures on document Mark-A though denying signatures on Mark B besides deposing that death certificate of Mata Deen produced on file as Ex.P31 was not prepared under his instructions since he was on leave during the said period and for that reason the applicants are seeking his physical presence in the Court so as to contradict him regarding signatures on said documents. The applicants have also sought to summon certain record from the witness in the form of his joining record alongwith his signatures appended at the

time of his joining at Sri Ganganagar Rajasthan, original documents signed by him as Sub Registrar at Sri Ganganagar and other documents pertaining to his jurisdiction during his leave period from October 2015 to December 2015 and further as per the letter/circular issued by Rajasthan Government for marking digital signatures on the official records alongwith his digital signatures marked on registered documents during his tenure at Sri Ganganagar, Rajasthan.

6. The trial Court after considering all facts and circumstances of the case has concluded that the application in hand was pre mature, as such was dismissed. For ready reference, the operative part of the order runs as follows:

5. However, in the considered view of the court, the case is currently at the stage of defendant evidence and the plaintiffs/applicants have already led their evidence. There is no mention of any digital signatures by the said witness in his examination in chief and it is revealed that the said witness has already specifically denied his signatures on certain documents while admitting his signatures on the other documents. At the time of conducting the evidence of said witness through video conferencing facility, currently posted at Barmer, Rajasthan, no objection was raised by learned counsel for plaintiffs/applicants, however the said witness could not be cross examined on the same date as the court time was over and on the next date of hearing the present application was moved.

6. In the considered view of the court, the present stage for moving the present application is pre-mature, since no cross examination has been conducted on the said witness even partially, wherein certain contrary facts could be revealed from his answers and conduct, which could justify securing his presence in the court in person alongwith all the documents or record sought

by the applicants/plaintiffs.

7. In the considered view of the court, the witness sought to be called in the court in person alongwith the record sought to be summoned from him is not necessary at this stage in case of absence of any cross examination, he being a public servant posted at far away place i.e. Barmer in Rajasthan and there should be sufficient circumstances, which would push for the justification for calling him in person in the court, for instance where his specific denial of signatures would be revealed after being putting the same to him in his cross examination and it could be suggested that he is intentionally not identifying his signatures.

8. Further, it is revealed from the application in hand that a lot of documentary evidence is sought to be summoned from the said witness by the plaintiffs/applicants for the purposes of confronting him in his cross examination without having any material present on record in the form of cross examination for assessing the relevance and the necessity of summoning of the said record and its availability with the said witness. The plaintiffs/applicants cannot under the garb of present application be allowed to summon every record to suit their interests from the witness summoned by the opposite side. Moreover, the said record sought to be summoned by the applicants/plaintiffs appears to be vague in nature and far from practicability at this stage, some of them being the original public documents of other parties signed by the said witness in his capacity as Sub Registrar, Sri Ganganagar during the year 2015 and the digital signatures sought to be summoned from him are nowhere mentioned in his examination in chief and the said witness cannot be directed to produce the same without assessing the availability of the same with him and his authority or power to produce the same in the court, which can be assessed only through the material produced on record in the form of his partial or complete cross examination.

9. Accordingly, in view of abovesaid discussion and observations, the

application in hand being pre-mature at this stage is dismissed. Now to come up on 07.10.2022 for concluding the defendant evidence with directions to plaintiffs to conclude the cross examination of witness Sarwar Mal as well as for further proceedings. Dasti process of the said witness, be issued at own responsibility of the concerned defendant for the date fixed.

7. This order left defendant Puran Ram aggrieved and he has filed the present revision petition.

8. I have heard learned counsel for the revisionist besides going through the record.

9. The plaintiffs had themselves given consent for recording of statement of Sawar Mal by way of video conferencing. His examination-in-chief had been recorded. Suddenly, the plaintiffs came up with a prayer that he be directed to appear in the Court in person since he was to be confronted with certain documents and his specimen handwriting was to be taken. The cross-examination of the witness had not been started even when the application was filed. This fact has been observed by the trial Court also. Counsel for the plaintiffs should have cross-examined the witness and if he resiled from his earlier statement made on a particular aspect, then he could have been got declared a hostile witness. But no such effort was made. The questions can be put effectively to a witness during his cross-examination even though not physically present but appearing through video conferencing. I fail to understand as to why the plaintiff is insisting to have presence of witness in the Court in person to face cross-examination. Such request was rightly declined by the trial Court and no fault can be found therewith.

10. Here the trial Court has not committed any wrong in

dismissing the application. The trial Court was justified in passing the impugned order and I do not see any reason to take a different view in the matter and to upset the order by accepting the revision petition.

11. Thus, the petition is doomed for failure and is dismissed accordingly.

7.12.2022
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No