

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 273/2023 (O&M)

Date of decision:17/01/2023

Bhupinder Singh

.....Petitioner.

Vs.

Ekam Singh and others

.....Respondenta

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Harsh Chopra, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in the present revision petition is for setting aside the order dated 26.10.2022 (Annexure P-9) passed by Ld. Addl. Civil Judge (Sr. Div.)/JMIC, Rupnagar dismissing the application dated 3.10.2022 Annexure P6, filed by petitioner/defendant no.5 and another (defendant No. 6), to recall witness Rattan Singh/ defendant no. 3/ DW1, for cross examination.

At the outset it is submitted by the learned counsel for the petitioner that it was imperative to recall witness DW1 Rattan Singh/ defendant no. 3, for cross examination in view of the contradictory pleas taken by him during the course of the trial.

It is submitted by Id. Counsel that the respondent No. 1 herein/ plaintiff, had filed a Civil Suit bearing CS-825-2015 for recovery of Rs. 61 lacs against the petitioner/ defendant no. 5, and the respondents no. 2 to 5 herein who are defendants no. 1 to 4 respectively before the Id. Trial Court. It is the pleaded case of the plaintiff that even though he has executed a sale deed dated 14.12.2006 in favour of defendant nos. 5 and 6, yet, sale consideration has not been paid to the plaintiff. Accordingly, he has filed the present suit for recovery.

Learned counsel refers to Annexure P-2 which is written statement dated 8.9.2017 filed by defendants 1 to 4 to the suit wherein the stand of the said defendants, including D3 Rattan Singh has consistently been that the suit of the plaintiff was not maintainable and that the plaintiff had no cause of action and that the alleged agreement had no value in the eyes of law. Learned counsel also refers to Annexure P-4 which is examination-in-chief by way of affidavit of D3 Rattan Singh where the same stand has been taken to the effect, that the suit of the plaintiff was not maintainable and no cause of action accrued to the plaintiff and he had no locus to file the suit, is reiterated. It is submitted that however, in his cross examination dated 17.1.2020 (Annexure P-5), DW1 Rattan Singh changed his stance entirely and in contradiction of his earlier stand stated that “*no amount of the sale deed was taken*”.

It is submitted that this statement of the said witness D3/ DW1 Rattan Singh in his cross examination is in contradiction of his averments in para 5 of the written statement (Annexure P-2) filed by him along with other defendants wherein it is stated that “*..... The sale deed dated 14.12.2006 was got scribed by the plaintiff himself after receiving the whole sale consideration*

and thereafter the plaintiff read the same and after admitting the same to be correct, he signed the same and the answering defendants never committed any fraud with the plaintiff because the answering defendants are not beneficiary of the sale deed dated 14.12.2006.”

It is submitted that accordingly in view of this patent contradiction in the stance of said DW1, and denial in cross-examination it was now necessitated that DW1 be recalled for cross examination. In support counsel relies upon **Paramjit v Prem Pal alias Mehar Pal and others, Law Finder Doc Id # 487724**; and **Urmil v Rajiv Kumar Gupta, Law Finder Doc Id # 775875**.

Heard learned counsel.

I find merit in the submissions made on behalf of the petitioner.

Issuance of notice is being dispensed with at this stage, as that will only further delay the matter.

Ld. Trial Court has dismissed petitioner's application for recalling of DW1 Rattan Singh only on the ground that the petitioner/defendant no. 5 had been afforded an opportunity to cross examine the said witness/defendant no.3 Rattan Singh, however, at that time he had chosen not to cross examine DW1 Rattan Singh. In my view this reasoning of the Ld. Trial Court is erroneous as prima facie it appears from the facts mentioned above that the said witness DW1/Defendant no.3/Rattan Singh has changed his stance during the course of trial.

Accordingly, for the reasons stated above, in the interest of justice, this revision petition is allowed and the learned Trial Court is directed

to grant one effective opportunity to the petitioner to cross examine DW1
Rattan Singh, however, subject to payment of Rs.5000/- as costs.

It is clarified that nothing stated above, shall be construed as
an expression or opinion on the merits of the case.

17/01/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No