

CR No. 8257 of 2018

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 8257 of 2018 (O&M)

Date of decision : 29.3.2023

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Mst. Majidan

.....Petitioner

vs.

Mohammad Sadiq and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Shehbaz Thind, Advocate for the petitioner.

Mr. Imraan Farooqi, Advocate for the respondents.

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H. S. Madaan, J.

Briefly stated, facts of the case are that, in a suit for grant of permanent injunction filed by plaintiff – Mst. Majidan against defendants Mohammad Sadiq and others, pending in the Court of Civil Judge (Junior Division), Malerkotla, during the course of proceedings, plaintiff filed an application under Section 151 read with Order 26 Rule 9 CPC, for recalling the order dated 30.10.2018.

Inter alia in the application, the plaintiff contended that she is owner in possession of the suit property, situated at Jamalpura, Ludhiana, with which the defendants had not concern, but the defendants fraudulently got the mutation sanctioned regarding this property in their favour on the basis of a forged and fabricated gift

deed in connivance with one Anwar and they illegally started raising construction to change the nature of suit property, therefore, a Local Commissioner be appointed, to conduct demarcation of the suit property to determine the actual and factual position existing at the spot. It was further prayed that order dated 30.10.2018, be recalled, since the plaintiff wanted to examine witnesses in rebuttal evidence.

The application was resisted by the defendants. The application was dismissed by the trial court vide impugned order dated 16.11.2018, observing that a Local Commissioner cannot be appointed to collect evidence on behalf of the parties and parties are to prove their respective case by leading evidence and furthermore in this case the parties have already lead evidence and the application was filed when the case was at the stage of rebuttal evidence therefore, prayer for appointment of Local Commissioner was declined. It was further observed, that no adverse order had been passed against the plaintiff on 30.10.2018, therefore, there was no occasion to recall the same.

Feeling aggrieved, the applicant-plaintiff has approached this Court by way of filing the present revision petition, notice of which was given to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

I find that the impugned order is perfectly legal and does not suffer from any infirmity or illegality. Valid reasons for passing such

order have been given. The application itself is misconceived, in as much as two distinct prayers have been combined in one application, one for appointment of Local Commissioner and the other for examining witnesses in rebuttal.

It has to be taken note of that provision with regard to leading additional evidence has since been deleted from the Code of Civil Procedure and the plaintiff can be allowed to examine witnesses in rebuttal if there is any material issue, onus of proving which lies with the defendant and not on legal issues, burden of proving which is put upon the defendant. How the plaintiff has got a right to lead evidence in rebuttal, has not been mentioned in the application. The plaintiff should have examined Rehmi d/o Faridu and Hardeep Singh, Process Server, when the case was fixed for the purpose of leading evidence by the plaintiff. Now when the case is mature for decision, she cannot ask for permission to examine such witnesses, stating that since diet money has been deposited by her, it was duty of the court to ensure their appearance. The whole approach of the plaintiff is misdirected. It is not duty of the Court to ensure appearance of the witnesses, before the Court. Basically it is for the parties to cause appearance of their witnesses. However, if they desire assistance of the Court in getting a particular witness summoned, then the agency of the Court does help in service of summons upon such witnesses and in some cases by executing warrants of arrest also. By depositing some money towards, diet money, a party cannot wash his hands off

the matter and escape responsibility to cause appearance of witnesses in the court. Therefore, deposit of diet money or not, does not given any right to the plaintiff to examine Rehmi d/o Faridu and Hardeep Singh, Process Server. The plaintiff should have requested the Court for a chance to examine such witnesses by taking dasti notices or seeking assistance of the Court in getting the service effected. When the plaintiff closed her evidence and the defendants had also concluded their evidence, then she cannot come up with a plea that since she has deposited the diet money for summoning of Rehmi d/o Faridu and Hardeep Singh, Process Server, she has got a right to examine them. No such right lies with her and there is absolutely no ground to allow her to do so at this stage.

The impugned order is quite detailed, well reasoned and does not suffer from any illegality or infirmity. The revision petition is without any merit and is dismissed accordingly.

The interim order passed in favour of the plaintiff on 4.12.2018, staying passing of final order, thus comes to an end.

29.3.2023 chugh	(H.S. Madaan) Judge
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Whether speaking / reasoned	Yes / No
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Whether reportable	Yes / No
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