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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-951-2018 (O&M)
Date of decision : 03.05.2023

Guddi Kaur @ Baljit Kaur

... Petitioner(s)

Versus

Lella Singh & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sherry K. Singla, Advocate for the petitioner.

Mr. Rishu Garg, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 15.01.2018 (Annexure P-8) whereby the defendant-respondents have been granted permission to examine the witness, Mewa Singh, Lambardar.

The brief facts relevant to the present *lis* are that the defendant-respondents herein closed their evidence as recorded in the order dated 09.02.2016. Thereafter, an application was filed for grant of permission to examine the witness of the Will, namely, Mewa Singh, Lambardar. The only reason given in the application was that Mewa Singh, Lambardar was ill at the relevant point of time and since he is a material witness being a marginal witness of the Will, hence, his statement is important. The said

application was contested by the plaintiff-petitioner and vide the impugned order dated 15.01.2018 (Annexure P-8) the said application has been allowed. Hence, the present revision petition.

Learned counsel for the plaintiff-petitioner would contend that the Will, in the present case, had been set up by the defendant-respondents and it was incumbent upon them to prove the Will in the affirmative. It is further the contention that the defendant-respondents closed their evidence vide order dated 09.02.2016 and that now, without assigning any reason, had moved the application for leading the evidence of Mewa Singh, Lambardar. Learned counsel has further pointed out that the Trial Court without going into the merits as to whether the application could be allowed once the evidence itself was closed by the defendant-respondents, merely by holding that the plaintiff-petitioner would have a right to cross-examine the witness, has allowed the application.

Per contra, learned counsel for the defendant-respondents has contended that the application has rightly been allowed and that the opportunity was also granted to the plaintiff-petitioner to lead additional evidence and that the witness, Mewa Singh, Lambardar was necessary as he was the marginal witness of the Will.

Heard.

In the present case the Trial Court, by a non-speaking order, has permitted the additional evidence without so much as going into the question as to whether the same could be allowed once the defendant-respondents had closed their evidence as noticed in the order dated 09.02.2016 especially

when an additional issue had been framed i.e “1-A Whether deceased Joginder Singh executed Will dated 13.08.2007 in favour of defendants no.1 and 2? OPD”. The application has been allowed only on the ground that the plaintiff-petitioner would have a right to cross-examine the witness. The impugned order dated 15.01.2018 (Annexure P-8) being a totally cryptic and non-speaking order is unsustainable in law.

In view of the above, the impugned order dated 15.01.2018 (Annexure P-8) is set aside. The matter is remanded to the Trial Court to decide the application afresh, in accordance with law.

It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

03.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO