

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114

CR-1553-2023 (O&M)

Date of decision: 13.03.2023

Amarjit Kaur & Another

...Petitioner(s)

Vs.

Surjit Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Varun Dhawan, Advocate for the petitioners.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the plaintiffs/petitioners seeking setting aside of order dated 06.02.2023 (Annexure P9) vide which petitioners' application for permission to examine petitioner No. 2/plaintiff No.2 as her own witness in contempt petition under Order 39 Rule 2-A CPC, has been dismissed.

2. Brief facts of the case are that petitioners had filed a Suit for declaration that they are owners in possession of suit land, and for injunction restraining defendants from interfering in the peaceful possession of plaintiffs. In the said Suit, petitioners filed an application under Order 39 Rules 1 and 2 CPC which was conditionally allowed by learned trial Court vide order dated 01.06.2017 (Annexure P1).

3. It is the pleaded case of the petitioners that respondents violated order dated 01.06.2017 and thereby petitioners were constrained to file application under Order 39 Rule 2-A CPC.

Respondents filed separate replies to the same and matter was fixed for

evidence and while leading evidence, petitioners examined their attorney Ajaib Singh, husband of petitioner No.1/plaintiff No.1, along with other witnesses.

4. However, as petitioner No.2/plaintiff No.2-Simarjit Kaur could not be examined, accordingly, petitioners moved an application for additional evidence (Annexure P7). Respondents No.2 to 8 filed reply (Annexure P8) to the said application. It is this application of the petitioners which has been dismissed vide impugned order dated 06.02.2023 (Annexure P9). Hence, present Revision Petition.

5. It is inter alia, submitted by learned counsel for the petitioners that petitioners had examined their attorney Ajaib Singh, husband of petitioner No.1/plaintiff No.1, along with other witnesses. However, inadvertently petitioner No.2/plaintiff No.2-Simarjit Kaur could not be examined. It is submitted that evidence of plaintiffs is still continuing and therefore, petitioners ought to have been permitted to examine petitioner No.2 as their own witness. It is submitted that for just and proper adjudication of the matter, it is imperative that petitioner No.2 be examined in her own capacity. It is further submitted that no prejudice will be caused to the respondents if petitioners' application is allowed.

6. No other argument is raised on behalf of the petitioners.

7. I have heard learned counsel for the petitioners.

8. Perusal of record of the case shows that admittedly, petitioner No.2 had already been examined as a witness through her attorney Ajaib Singh. Ajaib Singh was examined in place of petitioner No.2 herself. Thus, as per law, petitioner No.2 cannot be permitted to examine herself again. On a specific Court query, learned counsel for the petitioners has admitted this fact.
9. Further, admittedly, Ajaib Singh was examined as AW1 on 19.01.2019. Thereafter, petitioners had examined other witnesses and closed their evidence on 13.12.2019. Even respondents evidence was closed on 09.09.2022. Present application has been filed by the petitioners at the stage when case is fixed for arguments. No reasons whatsoever have been given by learned counsel for the petitioners for the belated filing of this application, or why petitioner No.2 was not examined if it was so imperative. It is clear that petitioners have filed present application just to fill lacunae in their case.
10. Moreover, learned trial Court has recorded in the impugned order that even present application has been moved and signed by Ajaib Singh attorney of the petitioners and not by petitioners/applicants themselves. Accordingly, I find no merit in the present Revision Petition and the same is hereby **dismissed**.
11. Pending application(s) if any also stand(s) disposed of.

13.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No