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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1945-2023
Date of Decision:- 20.11.2023

KHALSA HIGH SCHOOL , MANSA ...Petitioner

Vs.

VICE CHANCELLOR PUNJABI UNIVERSITY PATIALA AND ORS ...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. L.S. Sidhu, Advocate for the petitioner.

Mr. Amit Singh Sethi, Advocate for respondent No.1.

Respondent No.2 ex-parte.

Ms. Amrita Garg, Advocate for respondent No.3.

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AMARJOT BHATTI, J. (Oral)

1. The petitioner/plaintiff has filed civil revision under Article 227 of the Constitution of India for setting aside order dated 27.02.2023 (Annexure P-11) passed by learned Additional Civil Judge (Sr. Divn.), Mansa in Civil Suit No.338/2017, dated 05.08.2017 whereby the application filed by respondent Nos.1 and 3 i.e. defendant Nos.4 and 6 has been allowed to cross-examine Maghar Singh DW1 i.e. respondent No.4/defendant No.1 being illegal against the law and the facts of the case.

2. Learned counsel for the petitioner argued that the petitioner/plaintiff has filed civil suit against the respondents seeking possession and declaration on the basis of lease deeds which were got

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cancelled by defendant Nos.1 and 2 by cancellation deed being illegal liable to be set aside. A copy plaint is Annexure P-3. The suit was contested by defendants. The defendant Nos.1 and 2 filed their joint written statement which is Annexure P-4 and defendant Nos.4 and 6 also filed their separate written statement which is Annexure P-5 and the other defendants were proceeded against ex-parte. The issues were framed as per order dated 22.01.2019 which is Annexure P-6 and the case was fixed for plaintiff's evidence. The plaintiff examined Sukhwinder Singh as PW1 who was cross-examined by aforesaid two sets of defendants. The copy of cross-examination of Sukhwinder Singh PW1 is Annexure P-7. After the closing of plaintiff's evidence, the defendants examined Maghar Singh as DW1 who was cross-examined by the counsel for the petitioner/plaintiff. Copy of cross-examination of Maghar Singh is Annexure P-8. After the cross-examination of Maghar Singh DW1, an application was filed by defendant Nos.4 and 6 seeking permission to cross-examine this witness. Copy of application is Annexure P-9. Application was contested by the petitioner/plaintiff by filing reply dated 23.02.2023 which is Annexure P-10 and by passing impugned order dated 27.02.2023, Annexure P-11 the same was allowed and permission was given to defendant Nos.4 and 6 to cross examine Maghar Singh DW1. It is argued that in-case the defendant Nos.4 and 6 wanted to cross-examine Maghar Singh DW1 then they should have cross-examine him prior to the cross-examination of present petitioner/plaintiff. Now at this stage, the respondent/defendant Nos.4 and 6 cannot be permitted to cross-examine Maghar Singh DW1. To support his arguments, learned counsel for the petitioner has relied upon the authority cited in **2013 (1) CivCC 679 titled as Mohinder Singh Gill Vs.**

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Jagdeep Singh and others where in that case it was concluded that 'cross-examination of defendant by another defendant can be permitted only when co-defendant has pleaded or stated something against another defendant, the co-defendant would have a right to cross-examine the other.' However, in order to protect the right of plaintiff, the co-defendants would be allowed and directed to conduct inter-se cross-examination prior to the plaintiff so that they may not demolish the case of plaintiff by putting leading question to each other. It is pointed out that once Maghar Singh DW1 has been cross-examined by the plaintiff now the defendant Nos.4 and 6 cannot be permitted to cross-examine the said witness. The aforesaid factual position has not been appreciated rightly by the Court of Additional Civil Judge (Sr. Divn.), Mansa and they have been wrongly afforded an opportunity to cross-examine Maghar Singh DW1 by passing impugned order dated 27.02.2023 (P-11). It is prayed that the aforesaid order may kindly be set aside by accepting the present civil revision.

3. On the other hand, learned counsel for the respondent Nos.1 and 2 pointed out that perusal of written statement filed by defendant Nos.1 and 2 would show that they have supported the case of the plaintiff by admitting the contents of the plaint. In-fact it is the defendant Nos.4 and 6 i.e. respondent Nos.1 and 3 who are opposing the suit filed by the petitioner/plaintiff. This fact was rightly appreciated by the learned Court of Additional Civil Judge (Sr. Divn.), Mansa and the application seeking permission to cross-examine Maghar Singh - DW1 was rightly allowed by passing the impugned order dated 27.02.2023 (Annexure P-11). It is argued that the valuable right of the contesting respondents to cross-examine Maghar Singh DW1 cannot be taken away. For the proper

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adjudication of the case cross-examination of Maghar Singh DW1 by the contesting respondents/defendants No.4 and 6 is necessary. The Civil Revision is without merits and the same may kindly be dismissed.

4. I have considered the arguments and have gone through the record. Khalsa School through Sukhwinder Singh has filed suit for possession, declaration and permanent injunction regarding lease of land measuring 1001 kanals 10 marlas of land as detailed in the plaint by challenging the cancellation of lease deeds. The copy of plaint is Annexure P-3. It is a matter of record that the said suit is contested by Maghar Singh and Jugraj Singh and they filed their joint written statement which is Annexure P-4. The perusal of said written statement indicates that some of the facts are admitted to be correct whereas others denied for want of knowledge. In para No.5 of the written statement, it is claimed that Mahant of the Dera does not possess the right to sell the land of the Dera and the cancellation of lease deeds were also disputed as per the stand taken by the plaintiff. The defendant Nos.4 and 6 also contested the suit and filed their written statement which is Annexure P-5. The issues were framed and the statement of the plaintiff was recorded as PW1. The perusal of cross-examination indicates that Sukhwinder Singh was cross-examined by two sets of defendants as referred above separately by their respective counsel. Thereafter the statement of Maghar Singh DW1 was recorded. The cross-examination of DW1 is Annexure P-8 which indicates that Maghar Singh was cross-examined by plaintiff as a result defendant Nos.4 and 6 had filed application for cross-examination of DW1 which is Annexure P-9 and reply to this application is Annexure P-10 which was ultimately allowed by passing impugned order dated 27.02.2023,

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Annexure P-11. As referred above, the plaintiff and defendants No.1 and 2 appears to be on one side whereas the suit is contested by the respondents/defendant Nos.4 and 6. Once Maghar Singh stepped into the witness box the contesting party has got every right to cross-examine the witness. It is the basic principle that a witness examined in a particular case having common interest with the co-defendants or the plaintiff will be called upon first to cross-examine the witness and thereafter the contesting party will get the opportunity for cross-examination. It is for the Court to keep a watch on the proceedings of the case as to which party is to cross-examine the witness first. Keeping in view the facts of the case, the defendant Nos. 4 and 6 cannot be debarred to cross-examine the witness examined by other set of defendants i.e. defendant Nos. 1 and 2.

Therefore, considering the pleadings of the parties and the peculiar facts of the present case, I do not find any reason to interfere in the impugned order dated 27.02.2023 passed by Additional Civil Judge (Sr. Divn.), Mansa allowing the defendant Nos.4 and 6 to cross-examine Maghar Singh DW1. Therefore, the civil revision preferred by the present petitioner/plaintiff is accordingly declined.

Pending application (s), if any, also stands disposed of.

20.11.2023 **(AMARJOT BHATTI)**
snd **JUDGE**

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No

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