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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-2731-2023 (O&M)
Date of Decision: 03.05.2023

Talwinderjit Singh

....Petitioner

Versus

Inderjit Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

CM-8077-CII-2023

For the reasons stated in application, same is allowed as prayed for.

CR-2731-2023 (O&M)

Petition herein is to set aside order dated 16.02.2023 (Annexure P-7), whereby the Ld. Trial Court treated the cross-examination of DW-1 Inderjit Kaur and DW-2 Gurtej Singh as 'Nil' and to grant effective opportunity to petitioner/plaintiff to cross-examine the defendant's witnesses.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a suit (Annexure P-1) for declaration to the effect that he is owner in possession of the land having 1/16th share out of land measuring 28 Kanals 10 Marlas comprised in Khewat No.94 and 1/8th share out of land measuring 36 Kanals 04 marlas comprised in Khewat No.123, total land

measuring 6 Kanals 6 Marlas situated at village Booh, Tehsil and District Kapurthala.

2.2. Upon notice, respondent/defendant had filed a written statement (Annexure P-2), opposing the prayer of petitioner/plaintiff mainly on the ground that she is the legally wedded wife of Jagtar Singh and he during his lifetime had executed a Will dated 04.04.2016 in favour of defendant and plaintiff had told defendant that mutation on the basis of registered Will dated 04.04.2016 will be sanctioned in favour of defendant, after getting the death certificate of Jagtar Singh.

2.3. Thereafter, Ld. Trial Court framed issues on 31.05.2019 and as many as total 3 PWs were examined before Ld. Trial Court and plaintiff sought further time to produce further evidence. However, Ld. Trial Court by observing that plaintiff has availed more than 11 opportunities to conclude his evidence, closed his evidence vide order dated 20.01.2023 (Annexure P-3). Case was thereafter listed for evidence of defendant and defendant examined DW-1 before Ld. Trial Court on 02.02.2023 and even on the same day i.e., on 02.02.2023, the plaintiff/petitioner moved application (Annexure P-4) for recalling of order dated 20.01.2023, wherein valid reasons have been given that plaintiff is living abroad and therefore, he could not produce his evidence which is necessary for final adjudication.

2.4. Against order dated 20.01.2023 as well as order dated 02.02.2023 (Annexure P-5), petitioner filed a revision i.e., CR No.1241 of 2023 and the said revision was allowed vide order dated 23.02.2023 (Annexure P-6) granting two more opportunities to produce his evidence.

2.5. After passing of order dated 02.02.2023 (Annexure P-5), Ld. Trial Court proceeded with the evidence of defendant and DW-1 Inderjit Kaur as well as

DW-2 Gurtej Singh, tendered their examination-in-chief by way of affidavit on 02.02.2023 and 13.02.2023, respectively. However, on 13.02.2023, the case was fixed for 16.02.2023 for cross-examination of DW-1 and DW-2 and on the said date, the cross-examination of DW-1 and DW-2 was treated as 'Nil' vide impugned order by making an observation that said DWs were present since morning and it was 11.30 a.m. then and as such, learned Court below found no justification to ask the witnesses to wait further for Ld. Counsel for plaintiff.

3. Learned counsel for petitioner would argue that in the earlier revision petition, the aforementioned order could not be assailed as the same was not in the knowledge of plaintiff and now when plaintiff has changed his counsel before Ld. Trial Court, he apprised him about passing of the impugned order dated 16.02.2023 (Annexure P-7).

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondent/defendant seems unnecessary and is, therefore, dispensed with.

5. I have heard learned counsel for petitioner and gone through the case file.

6. It transpires that on an earlier occasion evidence of the petitioner (plaintiff before Ld. Trial Court) was closed vide order dated 02.02.2023 and the same was assailed before this Court in CR No.1241 of 2023 filed on 20.02.2023. Petitioner being sanguine that he would succeed in the revision petition, apart from the fact that impugned order dated 16.02.2023 closing his right to cross-examine the defendant's witnesses was not uploaded on the website of Ld. Trial Court, while on one hand his remedy of challenging that order was curtailed and on the other hand, his evidence was closed vide order dated 02.02.2023 (Annexure P-5).

7. Vide order dated 23.02.2023 (Annexure P-6) passed in CR No.1241 of 2023, I have already allowed plaintiff for adducing his evidence by granting further opportunities and in view of the changed scenario, it will be in the fitness of things that he is also given one opportunity to carry out the cross-examination of defence witnesses. Since the plaintiff’s evidence is underway, no prejudice would be caused to defendant in case cross-examination on DW-1 and DW-2 is also allowed to be conducted.

8. Petition stands allowed in above terms.

9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 03, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No