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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2859-2023 (O&M)

Date of decision: May 08, 2023

Sukhjit Kaur

....Petitioner

versus

Balwant Kaur @ Jaswant Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Mohd. Jameel, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 03.05.2023 (Annexure P-7) passed by learned Civil Judge (Junior Division), Malerkotla, whereby defence evidence of the petitioner-defendant No.1 was closed by order.

2. The revision petition is premised on the averments that respondent No.1/plaintiff filed Civil Suit for declaration and permanent/prohibitory injunction against petitioner claiming that she and proforma respondent are owners in possession of land in equal shares to the extent of 599/ 8085 shares (which stands in the name of petitioner in the revenue record on the basis of mutation No.2775 dated 01.07.2017).

2.1. Petitioner also filed a counter claim. Plaintiff's evidence started on 12.03.2018. She filed an application seeking direction to the petitioner to produce original Will dated 10.12.2016. On 13.03.2020, counsel for petitioner suffered a statement that he could not produce the Will at that stage as it was not found and whenever found, will produce the same. Case was adjourned from time to time from 15.04.2020 to 05.12.2022 for plaintiff's evidence and around 31 opportunities were granted to plaintiff/respondent No.1. On 15.12.2022, learned counsel for

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plaintiff closed his evidence by making separate statement and reserved his right of rebuttal. Thereafter, defence evidence started and matter was being adjourned by granting short adjournments. Vide impugned order dated 03.05.2023, evidence of petitioner/defendant No.1 was closed by order.

3. Learned counsel for the petitioner-defendant would contend that Will dated 10.12.2016 was given by petitioner to her earlier counsel which was not traceable to him as same was mixed up with his miscellaneous files and petitioner could not produce the same. Petitioner changed her counsel and after sometime, Will was traced by earlier counsel and handed over to petitioner.

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondent No.1/plaintiff seems unnecessary and is, therefore, dispensed with.

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

6. It transpires that on one hand plaintiff was given as many as 31 opportunities to lead her evidence while on the other hand, evidence of defendant No.1 (petitioner herein) has been closed after granting only four opportunities. On a Court query, learned counsel for petitioner submits that there is no intent on the part of defendant No.1 not to adduce her part of evidence but the same got delayed as crucial document being Will dated 10.12.2016 executed by husband of petitioner-defendant was misplaced as the same had been given to her earlier counsel and got mixed up with his miscellaneous files, and it took time to trace and get it back. Learned counsel for petitioner submits that said original Will could not be traced by the earlier counsel and in the absence thereof, petitioner-defendant was advised to seek adjournments from learned trial Court as non-production of crucial document in the evidence would seriously jeopardize the defence of petitioner.

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7. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. Prejudice would indeed be caused to petitioner unless afforded an opportunity to lead evidence.
8. In the peculiar premise, impugned order dated 03.05.2023 (Annexure P-7) is set aside. Revision petition is allowed. Trial Court shall accordingly proceed further in accordance with law by giving 5 effective opportunities to petitioner to produce her evidence or till she concludes her evidence whichever is earlier, subject to its discretion to grant further time depending upon work exigency before it.
9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 08, 2023
mahavir

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