

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

**Civil Revision No. 4578 of 2023(O&M)
Date of Decision: 11.08.2023**

Satwant Kaur

...Petitioner

Versus

Joginder Singh

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. H.P.S. Rahi, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ defendant against the order dated 21.04.2023 (Annexure P-2) passed by the Court of learned Civil Judge (Sr.Divn.), Ludhiana whereby the evidence of the petitioner has been closed by order in a civil suit No. 4612/ 2014, Joginder Singh Vs. Satwant Kaur.

2. The counsel for the petitioner submits that respondent has filed civil suit against the petitioner with regard to property in question and the same is being contested by the petitioner. It is further submitted that the petitioner is a senior citizen and is suffering eye ailment and earlier she lost her eye sight but now after getting treatment from PGI, Chandigarh, partial sight of her one eye has been restored. That the petitioner was unable to appear in the Court due to her medical condition. It is further submitted that the petitioner also deposited diet money to examine one Manwinder Singh @ Goldy as a witness and one another application was also filed for

appointment of Local Commissioner to examine DW Partap Singh who is unable to appear in the Court for his deposition due to old age. That the learned trial Court passed the impugned order while ignoring both the aforesaid applications moved by the petitioner. It is further submitted that trial Court should have summoned DW Manwinder Singh by issuing his summons and passed order on an application filed by the petitioner under Order 26 Rule 9 CPC. The counsel for the petitioner further submits that in the given circumstances impugned order deserves to be set aside.

3. I have considered the submissions made by counsel for the petitioner.

4. From a perusal of the certified copy of application dated 31.01.2020 it appears that the petitioner filed an application to summon Manwinder Singh @ Goldy as a witness and his diet money was also deposited. As per the counsel for the petitioner one another application moved by the petitioner to examine Partap Singh through Commission is also pending consideration before the learned trial Court. In case the diet money is already deposited by the petitioner to summon any witness, then it is bounden duty of the trial Court to make sincere efforts to summon the said witness. In case another witness Partap Singh is unable to appear in the Court due to his medical condition and there is request for his examination through Commission, the said request should have also been considered by the learned trial Court before passing the impugned order. In the given circumstances, the impugned order is not sustainable.

5. In the light of the above, present petition is allowed and the impugned order is set aside and the learned trial Court should proceed

further with the suit in accordance with law while taking into consideration the applications which are already filed by the petitioner.

6. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. If respondent is summoned to contest this litigation, he will have to incur huge expenses to defend this case. However, liberty is granted to the respondent that if he feels dissatisfied with this order, he may move an application to recall the same.

11.08.2023

Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No