

CR-4456-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.129

CR-4456-2022
Date of Decision: 08.12.2023

LOKESH DHIR

....Petitioner

Versus

JOGESH DHIR AND ORS.

..... Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. Ferry Sofat, Advocate
for the petitioner.

Mr. Atul Goyal, Advocate
for respondents No. 1 and 2.

Mr. Saurav Bhatia, Advocate
for respondent No.3.

ARCHANA PURI, J

Challenge in the present revision petition is to the order dated 26.09.2022 (Annexure P-7), passed by the Court below, whereby the request of the petitioner/defendant no.2, to cross-examine the witness, PW-1, Rajesh Kumar, was dismissed.

The essential facts to be noticed are as follows:

That initially, Lokesh Dhir, Jogesh Dhir and Sandeep Dhir had filed a suit against their other brother Kamal Dhir, for seeking declaration about the plaintiffs to be having 1/4th share in the property/house, as detailed in the head note of the plaint and besides the same, also sought separate possession by way of partition by metes and bounds and consequential relief of permanent injunction.

During the pendency of the said suit, PW-1, Rajesh Kumar,

who was attorney holder of all the plaintiffs, was examined on 14.09.2017. Thereafter, when the case was at the stage of DWs, an application was filed by plaintiffs No. 2 and 3 (who are respondents No.1 and 2 in the present revision petition), under Order 1 Rule 10 CPC for transposition of plaintiff No.1 (who is the petitioner in the present revision petition), as defendant. The said application was allowed. Thereupon, amended plaint was filed and written statement was also filed by the initial defendant and subsequent defendant i.e. Lokesh Dhir. Thereafter, when the case was at the stage of recording of evidence of the defendants, it was specifically observed by the Court below, vide order dated 19.09.2022 that defendant No.1 shall not get any right to cross-examine the witness, PW-1 and only defendant no.2, who was inducted subsequently, shall have right to examine PW-1.

The case was further adjourned for 26.09.2022 for cross-examination of PW-1 by defendant No.2 only. On the subsequent date i.e. 26.09.2022, it was brought to the notice of learned lower Court that Power of Attorney in favour of PW-1 had already been revoked, and if the defendant wants to examine the witness again, the plaintiff shall have to adduce the testimony of new attorney of the plaintiffs.

However, the Court below vide the impugned order, had made an observation that the plea of defendant No.2 i.e. Lokesh Dhir, the present petitioner, is similar to the defence of defendant No.1 (Kamal Dhir), who was already impleaded as defendant No.1 and also observed that if there is any variation in the stand of defendant No.2, he can produce evidence in that regard. Further, the case was fixed for recording of the evidence of the defendants. This order, as such, was challenged by Lokesh Dhir (who is defendant No.2).

The factual position aforesaid with regard to the filing of the suit and consequential transposition of plaintiff No.1 as defendant No.2 and revocation of Power of Attorney in favour of Rajesh Kumar, who was earlier examined as PW-1, has not been disputed by learned counsel for the respondents.

However, learned counsel for respondents No. 1 and 2 makes a submission that since PW-1, Rajesh Kumar, was having an interest, adverse to the interest of respondents No.1 and 2, therefore, the Power of Attorney was revoked and thereupon fresh Power of Attorney was executed in favour of Vishal Suri.

In view of the same, he submits that it shall not be appropriate and within the power of respondents No.1 and 2, to produce Rajesh Kumar, whose cross-examination is to be further conducted.

In the given circumstances, without prejudice to the rights of the parties to be adjudicated, at appropriate stage by the Court below, it shall be in the fitness of the circumstances, if the subsequent Power of Attorney holder of respondents No.1 and 2 is allowed to be examined as a witness, to facilitate the appropriate opportunity to be given to the petitioner, to conduct cross-examination of the witness, in pursuance of his being transposed as defendant No.2.

Learned counsel making appearance for parties today have no objection, about the examination of the subsequent Power of Attorney holder, Vishal Suri, as witness and granting of an opportunity to conduct cross-examination. Since, fresh witness is going to be examined, therefore, both Kamal Dhir as well as Lokesh Dhir, who are defendants before the Court below, shall be allowed to conduct cross-examination of the said

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witness.

In view of the aforesaid observations, the revision petition, as such, is hereby accepted and the impugned order dated 26.09.2022 (Annexure P-7) is hereby set aside.

The next date before the Court below is stated to be 19.12.2023 and on that date, respondents No. 1 and 2 shall produce the witness, Vishal Suri on the date already fixed before the Court below or on the subsequent date to be fixed by the Court below, within a period of 15 days thereafter. On appearance of Mr. Vishal Suri, the petitioner as well as respondent No.3 shall be given an opportunity to conduct cross-examination of the said witness and the entire process should be completed, maximum within three short adjournments.

Accordingly, the revision petition stands disposed of.

08.12.2023
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(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No