2024:PHHC:040358

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

**CR-5582-2018 (O&M)**
Date of decision: 20.03.2024

Yadwinder Kaur

....Petitioner

Versus

Bhupinder Singh (deceased) through LRs and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Nakul Sharma, Advocate for the petitioner

Mr. Rakesh Chopra and
Mr. Jashan Chopra, Advocates for the respondents

**ANIL KSHETARPAL, J (Oral)**

1. This revision petition has been filed by the defendant to challenge the correctness of the order permitting his counsel to further cross-examine defendant no.1 and his witnesses.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Originally, the plaintiff's suit for the grant of decree of declaration to the effect that he is owner to the extent of half share of the suit property was dismissed by the trial court vide judgment and decree dated 07.12.2013. In an appeal filed by the plaintiff, the First Appellate Court remitted the matter back to the trial court with the following observations:-

> "*15. As a result of the aforesaid discussion, the court is left with no other option but to set aside the findings returned by the ld. Lower court by way of the impugned judgment dated 7.12.2013 in toto. The necessary consequences that follow are:-*

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> *1) The civil suit under reference stands revived and remanded to the lower court for fresh adjudication.*
> *2) The court shall proceed to array all the heirs of Gulzar Singh, existing and alive at the time of his death according to Hindu Succession Act, as parties to the suit.*
> *3) The court shall, after receiving the pleadings of the newly impleaded parties, frame fresh issues or recast the previous issues as it feels necessary in the interests of justice.*
> *4) The parties be given fresh opportunity to adduce any other evidence if they so desire.*
> *5) After receiving fresh evidence, if at all, the court shall return fresh findings on all the issues after taking into consideration the entire evidence on the record.*
> *6) The court shall make a sincere endeavour to dispose off the matter as expeditiously as possible within four months.*
> *7) The parties shall appear before the learned lower court on 3.5.2018 for further proceedings.*
>
> *The appeal is accordingly disposed off. Copy of this judgment alongwith lower court file be directly transmitted to the lower court for further proceedings and appeal file be consigned to the record room."*

4. Pursuant to the aforesaid order, once again the proceedings started before the trial court. On 30.08.2018, the plaintiff's counsel stated that the evidence already led by the plaintiff be read as his oral evidence. Subsequently, the defendant also made a statement to the same effect and closed his evidence.

5. On 09.08.2018, the plaintiff filed an application that he wants to cross-examine the defendants and also his witnesses, which has been allowed by the court.

6. From a perusal of the application as well as the order passed by the trial court, it is evident that no reason whatsoever has been

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recorded or given either by the plaintiff or by the court to allow the request of the plaintiff to recall the witness.

7. Recalling of the witness is regulated by Order XVIII Rule 17 Code of Civil Procedure, 1908. It is not in dispute that the plaintiff was granted an opportunity to cross-examine the witness in the first round. When the plaintiff was granted opportunity to lead evidence after the case was remanded, he did not lead any fresh evidence. Accordingly, defendant also made a similar statement. In these circumstances, it was not appropriate for the trial court to allow the plaintiff's application without any cogent reason to permit further cross-examination of the defendant and his witnesses.

8. Keeping in view the aforesaid facts and discussion, the revision petition is allowed. The impugned order passed by the trial court on 10.08.2018, is set aside.

9. All the pending miscellaneous applications, if any, are also disposed of.

20.03.2024 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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