

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

141

CR-995-2024 (O&M)

Date of decision:20.02.2024

Sikander Singh Deol (deceased) through his L.Rs. & another

... Petitioner

Vs.

Davinder Singh Deol & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Rakesh Gupta, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by legal representatives of the petitioner/defendant No.1 against the order dated 18.01.2024 passed by the Civil Judge (Jr. Division), Ludhiana, vide which the evidence of the petitioners/defendant was closed by order.

2. Brief facts that are material for the purpose of adjudication of the present revision petition are that the respondent No.1/plaintiff filed a suit for declaration to the effect that he is the owner of the 1/3 share in the property in dispute as detailed in the head note of the plaint, situated at village Dhatt, Hadbast No.108, Tehsil Mullanpur Dakha, District Ludhiana and for declaration to the effect that the alleged power of attorney dated 28.09.2009 allegedly executed by the plaintiff and his brother Joginder Singh Deol (defendant No.3) in favour of petitioner/defendant No.1 Sikander Singh is illegal, null and void and is an act of fraud and misrepresentation along with other relief as sought in the suit.

3. On issuing notice, defendants appeared and filed their written statement. Thereafter, the issues were framed and the case was fixed for plaintiff's evidence. The case remained pending for the plaintiff's evidence since 02.11.2022 and when the plaintiff failed to conclude his evidence, then it was closed by order of the Court on 02.11.2022 and the case was fixed for 10.11.2022 for defendants' evidence. Defendant No.1 – Sikander Singh Deol had died during pendency of the suit. Defendant No.2 – Jaswant Kaur Deol and other legal representatives of the deceased defendant were settled abroad and they came to India in the month of March, 2023. During the said period, suit was adjourned several times for defendants' evidence. An application for impleading the legal representatives of deceased Sikander Singh Deol was filed before the trial Court and it was allowed vide order dated 28.04.2023 and the case was fixed for filing of the amended title for 09.05.2023. Then an application for preponement of the case was filed on behalf of the defendants, notice of which was issued to the other party for 03.05.2023. On 03.05.2023, amended titled was filed. DW1 Amanjit Kaur, petitioner No.2 herein was examined and the case was adjourned to 05.05.2023 for her cross-examination. Her cross-examination was completed on 11.05.2023. DW2 was examined on 19.07.2023 and thereafter case was adjourned several times, sometimes on the request of the petitioner and sometimes for some other reasons. Record from the office of the Sub Registrar, Jagraon was summoned and the Record Keeper from the said office disclosed before the trial Court that the concerned record was lying in the office of the Sub Registrar, Mulanpur Dakha, District Ludhiana. The said witness was also summoned and thereafter he was summoned throughailable warrants vide

order 08.12.2023, 20.12.2023 and 18.01.2024. On 18.01.2024, defendant No.1 filed an application for fixing and depositing of the diet money for summoning the witness but the trial Court on 18.01.2024 wrongly closed the defendants' evidence. Hence, the revision petitioner has knocked the doors of this Court by filing the present revision petition.

4. It has been contended by learned counsel for the petitioner that the civil suit pending before the trial Court had not been delayed at the instance of the petitioner/defendants, rather the delay was caused on the part of the plaintiff/respondent No.1, who failed to conclude his evidence even after six years. Defendant's evidence started only on 10.11.2022. DW1 and DW2 had already been examined and now only the official witnesses are required to be summoned for their examination in the defendant evidence. He has further contended that the examination of these official witnesses is very material for just and proper adjudication of the case. Therefore, he has prayed that one effective opportunity may be given to him for examining the above said witnesses.

5. I have heard learned counsel for the petitioner at length and have perused the record.

6. From the perusal of the impugned order, it transpires that despite of availing ample opportunities including the last opportunity, defendant failed to conclude his evidence and then it was closed by order of the Court vide the impugned order dated 18.01.2024.

7. Though there is no infirmity in the impugned order yet the aforesaid official witnesses being the material witnesses of the defendant, it would be appropriate if the trial Court is directed to grant one effective

opportunity to the petitioners/defendants to examine the aforesaid official witnesses subject to cost of Rs.10,000/- to be paid to the respondents. The trial Court will assist the defendant/petitioners by issuing the summons to the official witnesses that are required to be examined, but it will be at the own responsibility of the defendant/petitioners to get effected the service of these official witnesses. Therefore, the impugned order dated 18.01.2024 (Annexure P-5) is set aside and the revision petition is allowed in the aforesaid terms.

8. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

20.02.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |