

CR-1055-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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CR-1055-2024 (O&M)

Date of Decision: 29.02.2024.

Kulwinder Kaur

...Petitioner.

Versus

Gurbaksh Kaur

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Rahul Garg, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged the order dated 14.02.2024 (Annexure P6) passed by the trial Court, vide which an application to cross-examine the plaintiff was allowed.

2. The brief facts of the case are that the plaintiff/ respondent filed a suit for possession for land measuring 0 Kanal—1 ½ Marla being part of Khewat No.531/512 min, Khatoni No.653, Khasra No.248 (0-3) located in the revenue limits of village Nangali, HB No.354, Tehsil Nangal, District Rupnagar by pleading therein that the plaintiff is exclusive owner of suit property measuring 3 Marla and defendant is stranger qua the suit property, but is owner of adjoining property from the eastern side. Since, the property of defendant is adjoining to the suit property, therefore, taking the undue

advantage of the said fact, defendant encroached upon about 1 ½ Marla of the land belonging to the plaintiff and also raised illegal and unauthorized construction. As defendant failed to adhere to the request of the plaintiff to vacate the encroached area, hence the present suit was filed.

3. Notice of the suit was given to the defendant/ respondent, who appeared and filed his written statement while contesting the said suit.

4. After framing of the issues as per the pleadings of the parties the case was posted for adducing of evidence of the plaintiff for 05.04.2019. After availing numerous opportunities to lead her evidence, plaintiff closed her evidence vide statement dated 08.11.2023 made before the trial Court. Thereafter, defendant also led her evidence and closed her evidence on 24.01.2024, and the matter was posted for rebuttal arguments. But on 08.02.2024 plaintiff moved one application alleging that it had come to the notice of counsel for the plaintiff that cross-examination of plaintiff Gurbaksh Kaur had not been conducted and prayed that even though the evidence of the plaintiff had already been closed, yet the plaintiff be granted one opportunity for completing her cross-examination. Reply to the said application was filed and thereafter the said application was allowed by the trial Court vide impugned order dated 14.02.2024. Hence the petitioner has knocked the doors of this Court by way of filing the present revision petition.

5. Learned counsel for the petitioner has contended that the plaintiff availed 36 opportunities to lead her evidence and herself closed her evidence by making a statement before the trial Court. So in the facts and

circumstances of the case, the trial Court has erroneously allowed the application of the plaintiff regarding conducting of her cross-examination. The trial Court also failed to appreciate that both the parties had closed their evidence and as such the defence of defendant has already been disclosed. In order to fill up the lacuna, now the plaintiff cannot be allowed to get her cross-examination conducted when the matter is posted for the final arguments.

6. I have heard learned counsel for the petitioner and have gone through the relevant record.

7. From the record, it transpires that inadvertently, due to oversight, the plaintiff closed her evidence without conducting of her cross-examination and this fact did not come to the notice of counsel for the plaintiff that the plaintiff was yet to be cross-examined. As the plaintiff has appeared as her own witness, as such her testimony is very material for adjudicating the matter in controversy. The trial Court has rightly considered this fact that if the cross-examination of the plaintiff would not be conducted, then her statement could not be read into the evidence. Moreover, conducting of cross-examination of the plaintiff by the defendant is not likely to cause any prejudice to the defendant and rather the defendant will be getting the opportunity to test the veracity of the statement made by the plaintiff and it is always in the interest of justice if lis is decided on merits.

8. Otherwise also, only one opportunity has been granted by the trial Court to the plaintiff for conducting of her cross-examination which is

quite fair and reasonable.

9. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

29.02.2024.
komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No