

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

135

**CR-1856-2024 (O&M)
Date of decision:21.03.2024**

Geeta Rani & others

... Petitioners

Vs.

Shavi Kishan Dhain & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Brajesh Kumar Kaundal, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by the petitioners/defendants No.1 and 2 against the order dated 15.01.2024 passed by the Civil Judge (Jr. Division), SBS Magar, vide which the evidence of the petitioners/defendants was closed by order.

2. Brief facts that are material for the purpose of adjudication of the present revision petition are that the plaintiffs/respondents filed a suit for declaration to the effect that the plaintiffs are the owner in possession of the house measuring 5 marla 1 sarsahi to the extent of their share as shown in red colour in the site plan, being the legal heirs of Bhupinder Kumar (since deceased) and further declaration was sought that the alleged agreement executed by defendant No.1 in favour of defendant No.5 is totally illegal, ultra virus, nonest, without any right, title or interest and the defendant No.1 was having no right to sell the house in dispute belonging to all the legal heirs of Bhupinder Kumar to the extent of 1/7 share each, situated in the area of Mohalla Khosla, Rahon, District SBS Nagar with consequential relief of

permanent injunction to the effect that the defendants may be restrained from executing any sale deed in favour of defendant No.5 as the property in dispute is the ancestral property/residential house/dwelling house of the parties being the ownership and possession of all the L.Rs. of Bhupinder Kumar.

3. On issuing notice, defendants No.1, 2, 4 and 5 appeared and filed their written statement. Thereafter, the issues were framed on 13.12.2023 and the case was fixed for plaintiff's evidence on 02.02.2023. On 02.02.2023, case was adjourned on the request of counsel for the plaintiffs to 22.03.2023, 28.04.2023, 06.07.2023 and 04.08.2023. On 04.08.2023, PW1 Shiv Kishan Dhain appeared and tendered into evidence his duly sworn affidavit Ex.PW1/A along with documents and the case was adjourned to 08.08.2023 for cross-examination of PW1 and remaining Pws. On said date PW1 was cross-examined and PW2 Gurcharan Singh tendered into evidence his affidavit Ex.PW2/A and was cross-examined. Thereafter the case was adjourned to 28.08.2023 and on the said date, the evidence of the plaintiffs was closed by his counsel and the case was adjourned to 14.09.2023 for defendants evidence. However, no DW was present and the case was adjourned to various dates. On 31.10.2023, DW1 Yogita Jhaji was present and tendered her affidavit along with documents but her cross-examination was deferred. The case was adjourned to various dates and on 14.11.2023, DW1 was partly cross-examined by LC and her further cross-examination was deferred. On 30.11.2023, DW1 was cross-examined and while adjourning the case to 11.12.2023 for examination of remaining DWs, last opportunity was granted and the case was adjourned to 20.12.2023 for

evidence of the defendants subject to cost of Rs.100/- and last opportunity was given to them to conclude their evidence. On the said date, DW2 Gurdeep Kaur tendered her affidavit and her cross-examination was deferred to 15.01.2024. Thereafter on 15.01.2024, DW2 Gurdeep Kaur was cross-examined and evidence of the defendants was closed by order. Hence, the revision petitioners have knocked the doors of this Court by filing the present revision petition.

4. Learned counsel for the petitioners has contended that due to communication gap with the counsel, the petitioners were having the impression that the case was fixed for their evidence till 27.02.2024. But when the petitioners asked for adducing some evidence in their favour, then it came to their knowledge that the case is now fixed for rebuttal evidence as their evidence was closed vide the impugned order dated 15.01.2024. He has further contended that the delay was not intentional on the part of the petitioners but it was due to the aforesaid bonafide reasons and accordingly he has prayed that one effective opportunity may be given to the petitioners for adducing their evidence.

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

6. From the perusal of the impugned order, it transpires that despite availing of several opportunities and imposing of costs, defendants failed to conclude their evidence and then it was closed by order of the Court vide the impugned order dated 15.01.2024.

7. Though there is no infirmity in the impugned order, yet in order to enable the defendants to produce on record their material evidence, it

would be appropriate if the trial Court is directed to grant one effective opportunity to the petitioners/defendants to conclude their evidence at their own responsibility subject to cost of Rs.5000/- to be paid to the respondents. Therefore, the impugned order dated 15.01.2024 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

21.03.2024
harjeet

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