

2024:PHHC:058717

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

CR-3196-2022 (O&M)
Date of decision: 29.04.2024

Raj Kumar and another

...Petitioners

Versus

Inderjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.S.Adlakha, Advocate for the petitioners
None for the respondents

ANIL KSHETARPAL, J (Oral)

1. Case has been called out twice. Learned counsel representing respondent no.1 to 5 did not come forward to assist the Court. The only point in issue, which requires adjudication is as to “whether the consenting defendants can be permitted to lead evidence after their evidence has been closed?”

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

3. Sh.Inderjit Singh, Narpal Singh and Harpal Singh sons of Sh.Dayal Singh alias Deen Dayal alongwith Smt.Pushpa, daughter-in-law of Sh.Dayal Singh filed a suit for declaration to the effect that the plaintiffs are owners in possession of certain land. Various other reliefs were sought. Sh.Dayal Singh @ Deen Dayal was impleaded as defendant no.4. The plaintiffs concluded their evidence on 25.07.2018. Thereafter, the defendants were called upon to lead evidence. Contesting defendant no.1 to 4 concluded their evidence on 26.02.2019.

At that stage, defendant no.4 was ex-parte. Subsequently, defendant no.4 filed an application to set aside the ex-parte proceedings. He contested the case. The application was allowed. However, thereafter, he filed a written statement admitting the claim of the plaintiffs. Subsequently, he filed an affidavit in evidence, which was opposed by the contesting defendants by filing an application.

4. Learned counsel representing the petitioners submits that the matter in issue is covered by a Division Bench in **Harminster Pal and another vs. Pritam Dass and others 1990 (2) RCR (Rent) 518.**

5. Para 6 of the judgment relied upon by the learned counsel representing the petitioners reads as under:-

“6. After hearing the learned counsel for the parties and going through the case law cited at the bar we are of the considered view that the party who admits on supports the claim of the plaintiff, could be allowed to lead evidence in support of the plaintiff's claim before the contesting defendants called upon to lead evidence. Once the contesting defendant is called upon to lead evidence and closes the same, then the consenting defendant cannot be allowed to lead evidence in support of plaintiff's claim. In other words, once a party admits the plaintiff's claim, it steps into bit shoes and will lead evidence, if any, alongwith the plaintiff. Once the contesting defendants are allowed to lead evidence then at that stage the consenting defendant could not be allowed to fill up the lacuna of the plaintiff's case. In Chhailu Ram's case (supra) the consenting defendants were allowed to lead evidence after the plaintiff had closed his evidence, At that stage, an objection was taken on behalf of the contesting defendants that the said defendant was not entitled to lead evidence. It was in that situation that it was held by this Court that the said defendant should be given an opportunity to lead his evidence before the contesting defendants could lead their evidence. In Subhash Chander's case(supra) the consenting defendant wanted to be transposed as plaintiff and then lead evidence in support of plaintiff's claim which application was dismissed by the trial Court. It was, therefore, held that the Court had every right to permit such defendant though

by order to examine any witness at any stage. In Nanak Chand's case (supra) it was observed that "I have no doubt, that when an issue of fact arises between the plaintiff and one of the defendants the other defendants who support the plaintiff's case cannot be prevented from examining evidence on that issue." It is, therefore, evident that in all these cases the consenting defendant was allowed to lead evidence in support of the plaintiffs case at the stage when the plaintiff was leading his evidence. In none of the cases referred to above, it has been held that the consenting defendant is entitled to lead evidence in support of the plaintiff's claim even after the contesting defendants have closed the evidence."

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. It is evident that the consenting defendants cannot be allowed to lead evidence in support of the plaintiffs because after the contesting defendants have led the evidence, it will result in prejudicing the case of the contesting defendants.

8. Keeping in view the aforesaid facts, the revision petition is allowed. The impugned order passed by the trial court on 20.07.2022 is set aside.

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

29.04.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE