

CR-7819-2023 (O&M)

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2024:PHHC:014661

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

CR-7819-2023 (O&M)

Date of decision: 01.02.2024

Jai Singh

....Petitioner

Versus

Jag Ram (since deceased) through his Lrs and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Rajesh Goyal, Advocate for the petitioner

Mr. Sapan Dhir, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein is defendant no.1 in a plaintiff's suit for the grant of decree of declaration to the effect that the plaintiff is the absolute owner of 11 kanals 14 marlas land. An application filed by the defendant for permission to lead additional evidence in order to examine himself and produce certified copies of order passed by the High Court on 23.03.1976, in RSA-1130-1965, sale deed no.337 dated 28.02.1963, transfer deed dated 03.03.2023, jamabandi for the year 2019-20 and relinquishment deed dated 03.05.2017, has been dismissed on the ground that the defendant has already availed as many as 21 opportunities.
2. The correctness of the aforesaid order is challenged before this Court.

3. The learned counsel representing the petitioner has drawn the attention of the Court to the various daily orders passed by the trial court from 03.01.2023 till 08.08.2023, which read as under:-

“DW-1 Kaptan Singh is present and partly examined. His crossexamination is deferred as copy of affidavit supplied today. No other DW is present. Per request of ld. Counsel for plaintiff, case stands adjourned to 04.01.2023 for cross-examination of DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is discharged for today and bound down for the next date of hearing.

Date of Order: 2023-01-03

No DW is present today. Per request of ld. Counsel for defendants, case stands adjourned to 12.01.2023 for cross-examination of already deferred witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is directed to appear before the Court through his counsel on the date fixed.

Date of Order: 2023-01-04

No DW is present today. Summon issued to PW concerned registry clerk, Bapoli received back duly served. Despite service, he has not turned up before the Court. Let, his, presence be secured through bailable warrant in the sum of Rs. 5,000/ with one surety in the like amount for 24.01.2023. Summon issued to PW concerned Patwari of Village Kurar received back unserved. Now, he be again summoned for the date fixed. Per request of ld. Counsel for defendants, case stands adjourned for crossexamination of already deferred witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is directed to appear before the Court through his counsel on the date fixed.

Date of Order: 2023-01-12

DW-2 Dinesh Sharma Halqa Patwari is present and examined. No other DW is present today. Bailable warrant issued to PW concerned registry clerk, Bapoli received back duly served.

Despite service, he has not turned up before the Court. Let, his presence be secured through non-bailable warrant for 07.02.2023. Case is also fixed for cross-examination of already deferred witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is directed to appear before the Court through his counsel on the date fixed.

Date of Order: 2023-01-24

Dw-3 Rajesh Kumar is present and examined. One another DW Kaptan Singh is present for his cross examination. But his cross examination could not be recorded on the request of ld. Counsel for the plaintiff. Heard. On his request, case stands adjourned to 22.02.2023 for cross-examination of witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is discharged for today and bound down for the date fixed.

Date of Order: 2023-02-07

File put up before me being Duty Magistrate as Ld. Presiding Officer is on Child Care Leave. DW-1 Kaptan is present for his cross examination. But his cross examination could not be recorded on the request of ld. Counsel for the plaintiff, case stands adjourned to 06.03.2023 for cross-examination of witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is discharged for today and bound down for the date fixed. File be sent back to the concerned court.

Date of Order: 2023-02-22

File put up before me being Duty Magistrate as Ld. Presiding Officer is on Child Care Leave. DW-1 Kaptan is present for his cross examination. But his cross examination could not be recorded on the request of ld. Counsel for the plaintiff. Now, the case stands adjourned to 27.03.2023 for cross-examination of witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is discharged for today and bound down for the date fixed. File be sent back to the concerned court.

Date of Order: 2023-03-06

DW-1 Kaptan is present for his cross examination. But his cross examination could not be recorded on the request of ld. Counsel for the plaintiff. Now, the case stands adjourned to 06.04.2023 for cross-examination of witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is discharged for today and bound down for the date fixed.

Date of Order: 2023-03-27

DW-1 Kaptan is present for his cross examination. His part cross examination is recorded but his further cross examination is deferred due to produce the copy of sale deed. Adjournment requested by ld. Counsel for the defendants, case stands adjourned to 25.04.2023 for completely cross-examination of witness DW-1 Kaptan Singh as well as for remaining evidence of defendants. DW-1 Kaptan Singh is discharged for today and bound down for the date fixed.

Date of Order: 2023-04-06

DW-1 Kaptan is present and recorded completely. No other DW is present today. Per request of ld. Counsel for the defendants, case stands adjourned to 09.05.2023 for remaining evidence of defendants.

Date of Order: 2023-04-25

File put up before me being Duty Magistrate as Ld. Presiding Officer is on casual leave today. No DW is present today. Per request of learned counsel for the plaintiff, case stands adjourned to 17.05.2023, for cross-examination of already deferred witness i.e. DW1 Kaptan as well as for remaining evidence of defendants. File be sent back to the concerned court immediately.

Date of Order: 2023-05-09

DW1 Kaptan is present but could not be examined on request of learned counsel for the plaintiff. No other DW is present. Per request of learned counsel for the plaintiff, case stands adjourned to 06.07.2023, for cross-examination of already deferred witness i.e. DW1 Kaptan as well as for remaining evidence of defendants. DW1 Kaptan is discharged for today and bound down for the date fixed.

Date of Order: 2023-05-17

No DW is present. Per request of learned counsel for the defendant, case stands adjourned to 19.7.2023, for cross-examination of already deferred witness i.e. DW1 Kaptan as well as for remaining evidence of defendants.

Date of Order: 2023-07-06

DW1 Kaptan is present but could not be examined on request of learned counsel for the plaintiff. No other DW is present. Per request of learned counsel for the plaintiff, case stands adjourned to 08.08.2023, for cross-examination DW1 Kaptan as well as for remaining evidence of defendants. DW1 Kaptan is discharged for today and bound down for the date fixed. It shall be last opportunity.

Date of Order: 2023-07-19

DW1 Kaptan is present and recorded completely. No other DW is present. Further adjournment sought. Heard. From the perusal of case file, it transpires that sufficient number of opportunities including last opportunities have already

been availed by the defendant to lead evidence. No cogent reason has been given by the defendant which could justify another adjournment. Hence, evidence of defendant is hereby closed by court orders. Now, case stands adjourned to 12.8.2023 for rebuttal evidence, if any and arguments.

Date of Order: 2023-08-08.”

4. He submits that the plaintiff’s counsel has been repeatedly seeking adjournments to complete the cross-examination of DW1 Kaptan Singh. He submits that the petitioner has been making all efforts to produce his evidence and from the reading of the orders, it is evident that the petitioner was not at fault.

5. On the other hand, the learned counsel representing the respondent submits that as many as 21 opportunities have already been granted to the petitioner to lead evidence and therefore, the court should not grant him further opportunity.

6. It is evident that all the documents sought to be produced are the certified copies either of the orders of the court or register of the Sub-Registrar. The defendant no.1 also wants to appear and record his testimony. The trial court has taken a myopic view, while dismissing the application. The purpose of the courts is to decide the case after granting sufficient opportunities to the parties to prove their case by leading their evidence. The plaintiff’s evidence was closed on 04.10.2021.

7. Keeping in view the aforesaid facts, the impugned order is set aside. The application filed by the petitioner shall stand allowed. The revision petition is allowed. The trial court is directed to grant two effective opportunities to the plaintiff to produce his entire evidence,

subject to the payment of Rs.5,000/- as costs, which shall be paid to the opposite party, within a period of one month, from today.

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

01.02.2024
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE