

CR-34-2019

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2025-PHHC-012594



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH
(108-1)**

**CR-34-2019 (O&M)
Date of decision:- 28.01.2025**

Reema and others

... Petitioners

Versus

Deep Rattan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kashish Garg, Advocate for the petitioners.

Mr. Jagjit Singh Gill, Advocate for respondents No.1 and 2.

None for respondent No.3.

SUVIR SEHGAL, J. (ORAL)

1. Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 07.12.2018, Annexure P-8, passed by the learned Civil Judge (Junior Division), Bathinda, whereby an application, Annexure P-6, filed by the plaintiffs-respondents No.1 and 2 for permitting plaintiff No.1 to get himself cross-examined, has been accepted.

2. Counsel for the petitioners states that plaintiffs filed a suit for declaration to the effect that they are owners in possession of 2/3rd share of the suit property on the basis of a WILL dated 28.03.2006 and for declaration to the effect that mutation dated 14.06.2010 regarding inheritance of Shanti Devi sanctioned on the basis of alleged WILL dated 16.08.1996 is a result of fraud. Upon notice, petitioners and respondent No.3, who were impleaded as defendants, filed a joint written statement contesting the suit and on the basis of the pleading of the parties, issues



were framed on 11.07.2013, Annexure P-1. Counsel submits that after availing numerous opportunities, when the plaintiffs-respondents No.1 and 2 could not conclude their evidence, the Trial Court by order dated 02.01.2018, Annexure P-3, closed their evidence. It is his assertion that after the defendants concluded their evidence, the plaintiffs filed an application, Annexure P-6, seeking permission for the plaintiff-Deep Rattan to step into the witness box for his cross-examination, which has been accepted by the Trial Court vide order impugned herein. It is his argument that after the evidence of the plaintiffs was closed by an order of the Trial Court, they cannot be permitted to produce a witness for cross-examination without challenging the order, whereby their evidence was closed.

3. Counsel for plaintiffs-respondents No.1 and 2 on the other hand has supported the impugned order and urges that no prejudice will be caused to the petitioners, in case, Deep Rattan, who is a material witness, is permitted to be cross-examined. He asserts that the defendants have been compensated with costs.

4. I have heard counsel for the parties and considered their respective submissions.

5. Civil Suit filed by plaintiffs-respondents No.1 and 2 is pending before the Trial Court since 2013 and issues were framed on 11.07.2013. A perusal of order, Annexure P-3, passed by the Trial Court shows that the plaintiffs were granted as many as 25 opportunities, but failed to conclude their evidence. Request for deferment made on their behalf was declined and the plaintiff's evidence was closed by an order dated 02.01.2018, Annexure P-3, passed by the Trial Court, which reads as under:-



“No PW is present. Perusal of file reveals that the case is old one and pertains to the year 2013 action plan cases. Moreover, plaintiff has already availed more than 25 opportunities but failed to conclude its evidence. Finding no justification for giving more adjournment for evidence of plaintiff, the evidence of plaintiff is, hereby, closed by order. Now for evidence of defendants, case is adjourned to 09.01.2018. PF/DM and list of witnesses, if any, be filed forthwith.”

6. Plaintiffs never challenged this order and after the defendants concluded their evidence, they filed an application, Annexure P-6, for recalling Deep Rattan for his cross-examination, which has been accepted vide the impugned order. An examination of the interim orders passed by the Trial Court shows that PW-Deep Rattan had been examined by the Trial Court on 10.04.2017 and his cross-examination was deferred on the request of counsel for the defendants as the copies of the affidavit had been supplied to them on that very day. The proceedings were thereafter adjourned on various occasions. On 01.05.2017, Deep Rattan appeared before the Trial Court for his cross-examination, but the suit was adjourned on the request of his counsel. Order dated 01.05.2017 deserves to be noticed and is reproduced hereunder:-

“PWs Deep Rattan and Poonam Kohli are present but could not be examined on request of counsel for plaintiff. Adjourned on request. Present PWs stand bound down for 12.05.2017. No other PW is present. Now entire remaining evidence of plaintiff be also produced at own responsibility for the date fixed. Dasti process be issued, if desired.”



7. A cumulative examination of all the interim orders, including the above reproduced orders, makes it evident that the plaintiffs have been remiss in leading evidence. Despite grant of ample opportunities, they did not conclude their evidence. Even though, plaintiff-Deep Rattan was present before the Trial Court for cross-examination, but the matter was adjourned on a request made on behalf of the plaintiffs. Their evidence stands closed by an order of the Trial Court passed on 02.01.2018, which has become final. The sole reason given for re-call of Deep Rattan is that he could not appear for cross-examination due to inadvertence and accidental omission. The reason given is extremely vague. There is no justification for the delay in filing of the application. This Court is of the view that the Trial Court has erred in permitting his cross-examination at a belated stage, more particularly, when the civil suit was at the stage of arguments. Impugned order suffers from material irregularity and illegality. It cannot be sustained and is set aside.

8. Revision petition is allowed.

9. Pending application(s), if any, stands disposed off.

28.01.2025
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No