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

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Date of Decision: 15.02.2025

SATWINDER SINGH

... Petitioner

V/S

JASBIR SINGH AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Prashant Bansal, Advocate for the petitioner.

SUVIR SEHGAL, J. (ORAL)

1. This revision petition has been filed under Article 227 of the Constitution of India, for setting aside order dated 03.12.2024, Annexure P-7, passed by the trial Court, whereby an application filed by petitioner-defendant No. 1, for recalling Jaswinder Singh, DW-2, Power of Attorney holder of Satwinder Singh, for further examination-in-chief, has been declined.
2. Counsel for the petitioner has argued that some vital questions regarding the factual position and the stand taken in the written statement could not be asked to Jaswinder Singh, DW-2, in examination-in-chief despite due diligence and his re-examination is necessary for the just decision of the case. He asserts that the interest of the respondent-plaintiff would be protected as he would have a right to cross-examine him.



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3. I have heard counsel for the petitioner and considered his submissions.

4. Respondent No.1-plaintiff filed a suit for permanent injunction restraining the defendants from getting a sale deed registered in their favour from Ajit Singh, pertaining to the agricultural land. Plaintiff also sought a declaration to the effect that he is the owner in joint possession to the extent of 1/3rd share in the suit land and that transfer deed, dated 15.05.2013, executed by Ajit Singh is illegal, null and void. The parties are siblings and upon being served, petitioner-defendant No.1 filed a written statement, Annexure P-2, contesting the suit, which was partly decreed by the trial Court vide judgment dated 13.03.2019 and the transfer deed was held to be illegal. In appeal preferred by petitioner-defendant No.1, first appellate Court remitted the matter to the trial Court for deciding it afresh by impleading Ajit Singh as one of the defendants. Petitioner executed a Special Power of Attorney in favour of Jaswinder Singh, who was examined as DW-2 and his examination was concluded on 01.08.2024. An application, Annexure P-5, is filed on the same day stating that some pertinent questions could not be asked and he may be permitted to recall DW-2 for his further examination-in-chief. Application has been resisted by respondent No.1-plaintiff and has been rejected vide order under challenge.

5. Order 18 Rule 17 Code of Civil Procedure, 1908 (for short 'CPC'), provides as under:-

“17. Court may recall and examine witness- The court may at any stage of the suit recall any witness who has

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been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the court thinks fit.”

6. It is not in dispute that power under Order 18 Rule 17 CPC can be exercised by the Court suo motu or on an application filed by a party to the suit. Power being discretionary has to be exercised with care and only in exceptional circumstances. However, a party cannot be permitted to recall a witness to fill in the lacuna in the evidence. In **Vadiraj Naggappa Vernekar (Dead) through LRs versus Sharadchandra Prabhakar Gogate (2009) 4 SCC 410**, Supreme Court has held that the purpose of the Rule is to enable the Court while trying a suit to clarify any doubts which it may have with regard to the evidence led by the parties. The provision is not intended to be used to fill up the omissions in the evidence of a witness, who has already been examined. Merely because the opposing side would have an opportunity to cross-examine the witness is not a sufficient ground to permit the recall of a witness, who has already been examined.

7. Adverting to the facts of the present case, it is evident that Jaswinder Singh, stepped into the witness box and was examined as DW-2 on 01.08.2024. Respondent No.1-plaintiff cross-examined him on the same day and his evidence was closed. Application, Annexure P-5, has been moved by the petitioner-defendants stating that despite due diligence, some questions which pertain to the factual position and the stand taken in the written statement could not be put to him and his re-examination is necessary. It is clear that the evidence now being sought to be introduced by recalling Jaswinder Singh was available when he was



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examined. It is not the case of the petitioner that new facts have been discovered subsequently which were not in his knowledge when the evidence was led. Only after his cross-examination, certain lapses came to the notice of the petitioner, which impelled him to move an application for recalling. Such a course does not make out a case for recall of a witness after his examination has been completed. There is no perversity or illegality in the order passed by the trial Court, rejecting the application.

8. Finding no merit in the petition, it is dismissed with no order as to costs.

15.02.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>