



CR-1257-2025

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-1257-2025

Date of decision : 03.03.2025

Vijay Kumar Garg

... Petitioner

Versus

Naveen Garg and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Shiv Kumar, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 23.01.2025 (Annexure P-12) passed by the Civil Judge (Jr.Div.), Faridabad, vide which the application filed by the respondent no.1-plaintiff no.1 under Section 151 CPC seeking permission to file additional affidavit in evidence of PW-1-respondent no.1-plaintiff no.1 has been allowed.

2. Learned counsel for the petitioner has submitted that the respondents no.1 to 4 had filed a suit for possession by way of partition with consequential relief of permanent injunction and the petitioner-defendant no.1 had filed a written statement and also a counter claim. It is submitted that the respondent no.1-Naveen Garg had given his affidavit in support of

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the suit and and the petitioner had carried out cross-examination of the said witness. It is further submitted that after the said cross-examination had been carried out, the respondent no.1-plaintiff no.1 had filed an application dated 04.12.2024 seeking permission to file additional affidavit, which application had been allowed by the trial Court illegally. It is submitted that the said application was meritless and should have been rejected and the impugned order dated 23.01.2025 is against law and deserves to be set aside as the same prejudices the rights of the petitioner.

3. This Court has heard the learned counsel for the petitioner and has perused the paper book and finds that the impugned order is in accordance with law and deserves to be upheld and the present petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

4. A perusal of the impugned order dated 23.01.2025 would show that it had been observed by the trial Court that the affidavit which was tendered by the plaintiff no.1-respondent no.1 on 03.01.2020 only incorporated the contents of the plaint and it was on the said aspect that he was cross-examined. It was observed that the said affidavit did not pertain to the counter claim and since it was within the discretion of the trial Court, as per the provision of Order 18 Rule 17 CPC to recall a witness, thus, it was necessary to give the plaintiff no.1 one opportunity to lead evidence with respect to the counter claim also. While passing the said order, reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Vadiraj Naggappa Vernekar (Dead) through LRs. vs. Sharad Chandra Prabhakar***



Gogate reported as **(2009) 4 Supreme Court Cases 410** in which it was observed that in case the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendant to cross-examine the witness.

5. By exercising the power under Order 18 Rule 17 CPC, the trial Court had permitted the plaintiff no.1 to file an affidavit strictly only in terms of the contents of the counter claim and no more and the same was made subject to the payment of cost of Rs.1000/-. In the impugned order, reference was also made to the order passed by the trial Court dated 13.11.2024 as per which an opportunity was required to be granted to the plaintiff to lead evidence on suit as well as counter claim and thus, it was observed that even the said order tilts in favour of the plaintiff no.1-respondent no.1 being granted opportunity to file an additional affidavit. The said order has not been annexed with the present petition to contradict the said observations. The observation made in the impugned order to the effect that the earlier affidavit dated 03.01.2020 incorporated the contents of the plaint and not the counter claim, has also not been disputed before this Court.

6. The provision of Order 18 Rule 17 CPC reads as under:-

“17. Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has 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.”

A perusal of the above would show that the Court has been given a power to recall any witness who has been examined at any stage of the proceedings. The said power is a discretionary power given to the trial Court and has been exercised by the trial Court in the present case, keeping in view the factum of there being a plaint and a counter claim in the present case and after taking into consideration all the relevant factors. This Court finds that the discretion exercised by the trial Court does not call for any interference by this Court while exercising its power under Section 227 of the Constitution of India.

7. The Hon'ble Supreme Court in the case of "***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil***", reported as **(2010) 8 Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to



ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

8. Keeping in view the abovesaid facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present petition being meritless, deserves to be dismissed and is accordingly dismissed.

9. Needless to say that when the respondent no.1-plaintiff no.1 appears in the witness box in compliance with the impugned order, right would be granted to the petitioner to cross-examine the said plaintiff no.1 with respect to the additional affidavit filed by him.

(VIKAS BAHL)
JUDGE

March 03, 2025.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No