



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1038-2025 (O&M)
Date of Decision: 03.03.2025

BALRAJ KAPOOR

... .PETITIONER

Vs.

AKHIL DEV AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Shiv Kumar, Advocate,
for the petitioner.

Mr. Varun Sharma, Advocate,
for respondent No.3/plaintiff/Caveator.

DEEPAK GUPTA, J.

Petitioner is defendant No.5 before the trial Court in Civil Suit titled '*Akhil Dev Vs. Veena Bhagat and others*', filed by plaintiff-Akhil Dev (*respondent herein*) seeking decree for specific performance of the agreement to sell dated 10.04.2008 executed by defendants No.1 to 4 in favour of the plaintiff regarding property in dispute. Declaration has also been sought that sale deed dated 30.05.2013 executed by defendants No.1 & 3 in favour of defendant No.5; sale deed dated 04.06.2013, executed by defendant No.4 in favour of defendant No.5 are illegal, null and void and so liable to be set aside. Further declaration is sought that subsequent sale deed dated 10.04.2015 executed by defendant No.5 in favour of defendant No.6; another sale deed dated 10.04.2015 executed by defendant No.5 in favour of defendant No.7; sale deed dated 05.11.2015 executed by defendant No.6 & 7 in favour of defendants No.8 & 9 are also illegal, null and void. In the alternative, plaintiff also prayed for recovery and for permanent injunction restraining defendant Nos.8 & 9.

2. During pendency of the suit, plaintiff moved an application *Annexure P3* under Order 18 Rule 3A CPC for directing defendant No.5 to appear himself before producing any other witness on his behalf.
3. Opposing the application, it was stated in the reply by defendant No.5 that he had appointed Sh. Gaurav Tayal as his Special Power of Attorney, who was having all the personal knowledge regarding the matter in controversy and that because of his ill health, he (*defendant No.5*) was unable to appear. He stated that his attorney shall appear on his behalf.
4. Ld. trial Court by way of the impugned order dated 19.11.2024 allowed the application, stating that DW2-Gaurav Tayal could not depose as Power of Attorney holder on behalf of defendant No.5-Balraj Kapoor and as such the affidavit filed by said DW2-Gaurav Tayal was discarded.
5. Assailing the aforesaid order, it is contended by Id. counsel that a party cannot compel the opposite party to appear in the witness box himself and that in case, petitioner-defendant No.5 wants to enter the witness box through his attorney, the plaintiff cannot compel him to appear in person.
6. Learned counsel for the petitioner has made a specific statement before this Court that after examination of his attorney i.e. DW2-Gaurav Tayal, petitioner-defendant No.5-Balraj Kapoor does not intend to appear in the witness box as his own witness.
7. On the other hand, counsel for the respondent-plaintiff contends that defendant No.5 is bound to appear himself in the witness box to face the cross-examination, as his attorney cannot have personal knowledge regarding the plea of *bona fide* purchaser.
8. I have considered submissions of both the sides and have appraised the paper-book.
9. Order 18 Rule 3A of the CPC reads as under: -

3A. Party to appear before other witnesses - *Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.*

10. As is evident from the aforesaid provision, in case a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf is examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at the later stage. The words '*wishes to appear*' clearly indicates that a party is not bound to examine himself as a witness. It is only in case the party wishes to appear himself, then he is required to appear in the witness box before any other witness is produced, unless court permits him to appear at later stage. There is no bar that a party cannot appear through his attorney.

11. As far as the contention that the attorney may not have personal knowledge of the controversy in the matter is concerned, it will be for the Court to draw adverse inference at appropriate stage, in case attorney of a party is unable to answer the relevant questions, germane to the matter in the controversy.

12. In ***Man Kaur (dead) by LRs Vs. Hartar Singh Sangha, Law Finder DOC ID # 224670***, Hon'ble Supreme Court has summarized the position as to who should give the evidence in regard to matters involving personal knowledge.

13. Although an attorney cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings with the principal of which the principal alone has the personal knowledge, it is for the Court concerned to draw adverse inference at an appropriate stage, in case the attorney holder is unable to answer about the transactions or dealings of the principle of the matters in controversy in this case. However, for this reason itself, a party cannot compel the opposite party to enter the witness box himself.

14. On account of the aforesaid discussion, the present petition is hereby allowed and the order dated 19.11.2024 is hereby set aside.

03.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>