

(2015) 07 P&H CK 0243

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 902 of 2013 (O&M)

Amarjit Singh Pradesi

APPELLANT

Vs

Gurdial Singh Pardesi

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3A
Constitution of India, 1950 — Article 227

Citation : (2015) 179 PLR 838

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Vaibhav Sehgal, for the Appellant; Chanchal K. Singla, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sabina, J—Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 2.1.2013 (Annexure P-1). Learned counsel for the petitioner has submitted that the parties are real brothers. Petitioner has filed suit for declaration that he was the exclusive owner in possession of the plot in question. Respondent while leading his evidence had examined his attorney as DW-1. Thereafter the defendant could not be permitted to appear in the witness box as DW-2 without permission of the Court. In this regard, learned counsel has placed reliance on order 18 Rule 3A of the Code of Civil Procedure, 1908 ("CPC" for short).

2. Learned counsel for the respondent, on the other hand, has submitted that the parties are residing in America. The attorney of the respondent had appeared in the witness box as DW-1. However, when the respondent visited India, he appeared in the witness box as his own witness. Order 18 Rule 3A CPC was directory and in a given case, Court could examine a party at a later stage, though, previous permission had not been taken by the party.

3. In the present case, petitioner has filed suit for declaration against the

respondent. Parties are real brothers and are residing in America. Petitioner has filed the suit through his attorney. Respondent also executed a power of attorney in favour of Harjit Singh DW-1. Consequently, Harjit Singh appeared as a witness on behalf of the respondent before the Trial Court as DW-1. However, thereafter respondent visited India and appeared in the witness box as DW-2. Thereafter, an application was moved by the petitioner that affidavit of DW-2 in examination-in-chief be struck "off as respondent had not taken permission as envisaged under Order 18 Rule 3A CPC. The said application was dismissed by the Trial Court vide the impugned order dated 2.1.2013 (Annexure P-1). Hence, the present petition.

4. Order 18 Rule 3A CPC reads as under:--

"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."

5. Order 18 Rule 3A is directory in nature. Initially respondent permitted his attorney to appear on his behalf as he was not in India. However, when the respondent visited India, he appeared as his own witness. No injustice can be said to have been caused to the petitioner warranting interference by this Court in revisional jurisdiction. Petitioner will get an opportunity to cross-examine the respondent. No ground for interference is made out.

Dismissed.