
(2014) 10 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 7118 of 2014

S. Davinder Pal Singh Rana	Vs	APPELLANT
Bhupinder Kaur Babbar and Others		RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2015) 177 PLR 646

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Sandeep Chopra, Advocates for the Appellant

Judgement

Gurmeet Singh Sandhawalia, J.—Challenge in the present revision petition is to the order dated 14.05.2014 (Annexure P-4) whereby, the Civil Judge (Jr. Divn.), Ludhiana has allowed the application of the plaintiff-respondent No. 1 and granted two opportunities to complete the evidence after imposing costs of Rs. 500/-. Challenge has also been made to the subsequent order whereby, the petitioner-defendant No. 2 had filed an application for review of the said order on the ground that the said opportunities were wrongly granted, which was dismissed on 19.09.2014 (Annexure P-6). Counsel for the petitioner has vehemently submitted that the evidence of the plaintiff was closed vide order dated 06.12.2013 (Annexure P-1) and in such circumstances, by allowing the application, the Trial Court has erred as it has recalled the order dated 06.12.2013. It is further submitted that the review has also wrongly been dismissed.

2. A perusal of the paper book would go on to show that the dispute is inter se the legal heirs of Iqbal Singh Rana who died on 30.01.2010. Defendants No. 1 and 2 being the widow and one son have set up a Will dated 28.01.2002 and the property involved is substantial as it pertains to 3 houses at Ludhiana, 5 acres of land in village Lalru, Tehsil Derabassi and agricultural land measuring 23 acres in village Tofapur, Tehsil Derabassi. In the proceedings for grant of injunction, the

Appellate Court had directed on 14.02.2012 that only 3 opportunities will be granted to the plaintiffs. In such circumstances, in spite of the fact that the Patwari was present and was being examined as PW-8 but had not brought the record, the Trial Court closed the evidence on 06.12.2013 by passing the following order:-

"PW 8 (Patwari) is present but has again requested for an adjournment that he has not brought the record. Not further adjournment is justified in the spirit of the order dated 14.2.2012 of the Ld. Appellate Court. The entire evidence of the plaintiff stands closed by order. Previous order is rectified for to this effect. Now to come up on 22.1.14 for DW"s/further proceedings."

3. The plaintiffs then filed the application on 22.01.2014 detailing as to how on 29.03.2012, six plaintiff witnesses were examined but cross examination of 3 of them was deferred at the request of counsel for the defendant. On 04.05.2012, they could not be examined and on the third date, Surinder Singh from the DTO Office was examined and cross examined by defendants No. 1 and 2 but cross examination was not done by defendant No. 4. The Court had closed down the plaintiff evidence but allowed the presence of plaintiff witnesses already bound down and again on 09.10.2012, counsel had taken a date. On 11.02.2013, PW-8 Karnail Singh had not brought the record and the case was adjourned to 04.07.2013 when both PW-8 and plaintiff were present but none had appeared on behalf of the defendants. On 06.08.2013 again, counsel for the defendants requested for another date and the case was adjourned to 22.08.2013 when the records were shown by PW-8 pertaining to Tofapur village but he had not brought the complete record. The case was adjourned to 06.12.2013 and on the said date, on account of not bringing the record, the order was passed.

4. The application was contested on the ground that it was not maintainable and the averments regarding taking of dates by the defendant's counsel were denied. The Civil Judge (Jr. Divn.), after hearing the counsel, came to a conclusion that the presence of the summoned witness is not on the shoulder of the plaintiff and he was bound down by the Court and bailable warrants of arrest had also been issued. It has been noticed that the plaintiff had been present on all the dates but was not cross examined and accordingly, a finding was recorded that effective opportunities had to be given and a party cannot suffer for the lapse of the official witnesses who failed to bring the record despite specific directions. It has also been further noted that the cross examination of the plaintiff was not conducted though she was present. In such circumstances, the application has been allowed. Even costs had also been imposed on the plaintiff for the delay in filing the application since in the meantime, two witnesses of the defendants were already examined. The review application filed by the defendant has been dismissed by holding that the Court can grant opportunity to lead evidence where sufficient reasons have been given by the party.

5. After hearing counsel for the petitioner, this Court is of the opinion that no fault can be found in the well reasoned order passed by the Trial Court. The

summary of facts has already been narrated above. Only official witness is sought to be examined who will produce the necessary record to enable the Court to come to a just decision and determine the real controversy inter se the parties. The application under Section 151 CPC, which was filed in the facts and circumstances and has been allowed is well justified keeping in view the dispute inter se the family and the fact that the plaintiff could not be faulted and there was no lapse on her part. Rather she was present all the time and she had not been cross examined and the record had not been brought by the official witness. It is settled principle that the lis is to be decided on the strength of its merits and not on the basis of technicalities between the parties. A party cannot be benefited only on account of some observations of the Court which had fixed a time schedule and solely on account of the fact that the Appellate Court had ordered that 3 effective opportunities had to be given, the evidence was not to be shut down in a summary manner as was done by the Trial Court on 06.12.2013, as has been noticed above. In such circumstances, there is no occasion to interfere in the well reasoned order passed by the Trial Court and the present revision petition is accordingly dismissed.