IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1562-2021
Date of decision:-16.8.2021

Brijender Singh @ Vijinder Singh

...Petitioner

Versus

Balwan Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Bhupinder Malik, Advocate
for the petitioner.

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H.S. MADAAN, J.

Case taken up through video conferencing.

Briefly stated, the facts of the case are that plaintiff Balwan Singh had filed a suit for possession by way of partition by metes and bounds of joint property by challenging the wills said to have been executed by Smt.Parwati Devi mother of the plaintiff. In that civil suit, he had impleaded Brijender Singh @ Vijinder Singh, Vikram Singh, Karanvir Singh, Rohtash, Tara Chand and Kehar Singh as defendants. After framing of the issues, the parties were afforded opportunities to lead evidence. Statements of DW2 and DW3 were recorded, who were not cross-examined on behalf of defendant No.1, namely, Brijender Singh @

Vijinder Singh. Subsequently, Brijender Singh @ Vijinder Singh – defendant No.1 had filed an application in the trial Court for recalling of those witnesses for the purpose of conducting their cross-examination on his behalf. In the application so filed by him, he had taken up the plea that on 18.5.2019 DW2 and DW3 were examined without his knowledge; defendants No.2 and 3 have got conflicting interest with defendant No.1 due to other litigation relating to will executed by Smt.Parwati Devi, therefore cross-examination of DW2 and DW3 on behalf of defendant No.1 is necessary to find out the truth.

The application was opposed by the plaintiff contending that when statements of DW2 and DW3 were recorded, then defendant No.1 along with his counsel remained present throughout the proceedings; that defendant No.1 does not claim any relief against defendants No.2 and 3 and vice versa, for that reason defendant No.1 did not cross-examine defendant No.3 – Karanvir Singh, who appeared as DW2 on 29.3.2019; the application had been filed by defendant No.1 as an after thought since his another suit was dismissed on 2.9.2019 by the Court of Civil Judge (Jr.Divn.), Hisar filed by him against defendants No.2 and 3; the plaintiffs are claiming their independent right by way of filing suit for injunction without seeking any declaration; that defendant No.1 wanted to use the proceedings of the suit in other litigation.

After hearing arguments, advanced by counsel for the parties, learned Civil Judge (Jr.Divn.), Hisar vide impugned order dated 17.2.2021 dismissed the application. The operative part of the order is contained in para No.3, which for ready reference is being reproduced as under:

3. After hearing both the counsels for the parties, this Court is of the view that the said application deserves dismissal because the claim of defendants is not rival to each other. Further, at the time of the cross-examination of DW2 and DW3, defendant No.1/his counsel was veery much present in the Court and at that time he did not raise any objection on the cross-examination of DW2 and DW3. Moreover, the claim of the defendant No.1 is only 1/3rd share in the suit property and 2/3rd share remains with the defendants No.2 and 3, so the interest is not adverse to each other. Further, the right to cross-examine belongs to an "adverse party" and a person who is not "adverse party" should not be allowed to intervene in the proceedings and to take part in cross-examination of witnesses. Moreover, the co-defendant, if allowed to cross-examine the defendant, will be able to practically nullify the effect of the plaintiff's cross-examination and to get in additional evidence to fill up any gaps which may have been disclosed by the plaintiff's cross-examination. Hence, application in hand stands dismissed.

Feeling aggrieved, defendant No.1 has filed the present revision petition praying for setting aside of impugned order and allowing of his application for recalling DW2 and DW3.

I have heard learned counsel for the revisionist/petitioner besides going through the record and I find that there is absolutely no

merit in the revision petition.

Section 115 of the Code of Civil Procedure, 1908 deals with power of revision providing that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity

The High Court may make such order in the case as it thinks fit.

Here, the impugned order does not suffer from any of such defect. The order passed by the trial Court is quite, well reasoned, based on proper appraisal and appreciation of correct, factual as well as the legal position. It is certainly not perverse, arbitrary or against the settled legal proposition. The statements of DW2 and DW3 were recorded in presence of revisionist/defendant No.1 and his counsel on 18.5.2019 and at that time no request was made on behalf of revisionist/defendant No.1 for permission to cross-examine those DWs citing the reason of conflict of interest between defendant No.1 and defendants No.2 and 3. The application for recalling of DW2 and DW3 was filed quite belatedly after about 7 months, which appears to be as an afterthought. The trial Court has clearly observed that defendant No.1 on one side and defendants No.2 and 3 on the other side are not having any conflict of interest and are not asking for any relief against each other. Therefore, defendant No.1 was

rightly not allowed to cross-examine DW2 and DW3 and application so moved by defendant No.1 was correctly dismissed by the trial Court. There is no reason to interfere with the said order by way of exercising revision jurisdiction.

Learned counsel for the revisionist/petitioner referred to various judgments i.e. ***Akhilesh Singh Versus Krishan Bahadur Singh and Ors., 2020(3) CivilLJ 22, Vinod Khimji Lodaya Versus Muljibhai Maujibhai Patel and ors., passed by Bombay High Court (Aurangabad Bench) and Mohamed Ziaulla Versus Sorgra Begum and another, 1997 AIHC 2628.*** However, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

16.8.2021 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No