

(1998) 02 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2890 of 1996

Raghubir Singh

APPELLANT

Vs

Smt. Malkiat Kaur

RESPONDENT

Date of Decision: Feb. 23, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (1998) 3 CivCC 464 : (1998) 119 PLR 473 : (1998) 3 RCR(Civil) 273

Hon'ble Judges: T.H.B. Chalapathi, J

Bench: Single Bench

Advocate: G.S. Punia, for the Appellant; S.N. Chopra, for the Respondent

Judgement

T.H.B. Chalapathi, J.

This Civil Revision is filed against the order of the Civil Judge, Junior Division, Fatehgarh Sahib, dated June 11, 1996, refusing the application Tiled by the petitioner-a plaintiff to permit the petitioner to lead additional evidence.

2. The plaintiff after examining two witnesses closed the evidence. Thereafter, the plaintiff filed an application to permit him to lead further evidence to prove the two disputed wills executed by the brothers of the plaintiff. That application was dismissed by the trial Court on the ground that the conditions as required under 17(A) of Order XVIII are not satisfied. The plaintiff has, therefore, filed this revision petition.

3. It is admitted fact that before closure of the evidence, the plaintiff took over the summons to the witnesses who are now sought to be examined. The diet money and process fee were also deposited but they were not served as the summons were not issued. The petitioner closed the evidence without seeking further time. The plaintiff now wants to examine those two witnesses. The trial Court dismissed the application on the ground that the conditions required under Rule 17(A) of Order XVIII are not satisfied. I am of the opinion that Rule 17(A) cannot be treated as

a bar to permit the plaintiff to lead further evidence. Sub-rule 4 of Rule 2 of Order XVIII gives ample power to the Court to permit any party to examine any witness at any stage. Thus, it is clear that apart from Rule 17(a), the Court has got power to permit any party to examine any other witnesses at any stage. In the instant case, the plaintiff wanted to examine two witnesses and for that purpose he had taken all steps to get the summons, he deposited the diet money and process fee but the Court did not issue the summons, therefore, there is a failure on the part of the Court in not issuing the summons. It cannot, therefore, be said the plaintiff is not entitled to examine witnesses for whom he had already sought issuance of summons. In this view of the matter, I am of the opinion that the plaintiff-petitioner can be permitted to examine the other witnesses for whom he has already applied for issuance of summons.

4. I accordingly set aside the order of the learned Civil Judge, Junior Division, Fatehgarh Sahib and permit the petitioner-plaintiff to examine the other witnesses, on the date fixed by the trial Court. No order as to costs.