

(2010) 10 P&H CK 0345

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 7030 of 2010 (O and M)

Geeta and Others

APPELLANT

Vs

Chandgi Ram and Others

RESPONDENT

Date of Decision: Oct. 27, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This is Plaintiffs" revision petition challenging the impugned order dated 21.09.2010, whereby their application for recalling the witness, was dismissed.

2. As per the averments made in this petition, Petitioners filed civil suit for possession by way of specific performance regarding the suit land alleging therein that Sh. Ajit Singh(since deceased) had entered into an agreement to sell on 29.07.2003 regarding the suit land with Respondents Nos. 1 to 3 who were liable to execute the sale deed in terms of the said agreement to sell on or before 29.08.2003. In the written statement, Respondents denied the execution of the agreement and it was submitted that Sh. Ajit Singh had forged the agreement dated 29.07.2003 on some blank papers which were signed by Respondents Nos. 1 to 3 for the purpose of filing written statement in Civil Suit No. 937 of 1995.

3. It is the further case of the Petitioners that both the parties led their evidence and the Respondents/Defendants produced DW.4 namely Sh. V.B. Kashyap, Handwriting and Fingerprint expert, who was cross-examined on 04.11.2009 but the said cross-examination was not proper and to the satisfaction of the Petitioners as the material questions to be asked from DW.4 were missing and their earlier counsel had cross-examined the witness in a totally suspicious and casual manner and

without applying his legal expertise in order to protect the interest of the Petitioners. Thus, the Petitioners filed an application for recalling the aforesaid witness on the ground that Sh. Ajit Singh, Plaintiff (since deceased) who was pursuing the case, could not attend the court proceedings due to heart ailment in the year 2009 and, therefore, in the interest of justice, the aforesaid witness be recalled for his cross-examination. The aforesaid application filed by the Petitioners was dismissed by the trial Court vide impugned order.

4. While rejecting the prayer of the Petitioners, the trial court observed that the Petitioners were given full opportunity to cross-examine the witness and the witness was cross-examined and simply because the counsel for the Petitioners had not effectively cross-examined the said witness, is not a ground to recall the witness.

5. I find no reason to interfere in the impugned order by invoking jurisdiction of this Court under Article 227 of the Constitution of India as no ground is made out to recall the witness for the purpose of cross-examination. Moreover, in whole of the petition, it has not been averred as to in what manner, the cross-examination of the witness was incomplete. It is not in dispute that full opportunity was given to the counsel of the Petitioners and their lawyer has cross-examined the witness. Though, provisions of the CPC are hand maid for the administration of justice but the same cannot be used to fill in the lacuna left in the case of the party.

6. In this view of the matter, I find no merit in this petition.

7. Dismissed.