



202-1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-986-2024 (O&M)

Date of Decision : 19.08.2025

Nazar Singh

... Petitioner

Versus

Kulbir Kaur and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Sirphikhi, Advocate for the petitioner.

Mr. Harminder Singh, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 25.01.2024 (Annexure P-8) whereby the application filed by the plaintiff-respondents under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 for recalling the witnesses i.e. DW2 Ramesh Chander and DW3 Pal Singh has been allowed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for declaration to the effect that they are co-sharers/co-owners in possession to the extent of 2/3rd share i.e. 1/6th share each in the land fully detailed and described in the schedule as given in the plaint having inherited the same after the death of Tara Singh son of Harnam Singh on the basis of natural succession as well as for permanent injunction. Defendant No.1-petitioner herein alongwith defendant No.2 filed a joint

written statement setting up a plea of a registered Will of Tara Singh dated 23.11.1994 executed in their favour. The plaintiff-respondents led their evidence by tendering certain certified copies of the documents and chose not to lead any oral evidence and closed their evidence in the affirmative. The defendants examined the scribe of the Will as DW2 and attesting witness of the Will as DW3. Both the said witnesses were duly cross-examined. Subsequently, after the cross-examination of the said witnesses had been closed, an application was filed under Order XVIII Rule 17 CPC for recalling the witnesses DW2 and DW3 on the ground that the DW2 Ramesh Chander, the scribe of the Will, had produced his Register and there was an entry of the Will of Kartar Singh, who is brother of Tara Singh, which was entered at serial No.596. The said witness as per the application was directed to produce the Will of Kartar Singh. An application at the time of rebuttal was also filed by the plaintiff-respondents under Section 65 of the Indian Evidence Act, 1872 for producing the Will dated 23.11.1994 alleged to have been executed by Kartar Singh which application was dismissed. Aggrieved by the same CR-4540-2018 was filed, which was disposed off vide order dated 22.08.2023. The said petition was partly allowed setting aside the order dismissing the application under Section 65 of the Indian Evidence Act, 1872 and the plaintiff-respondents were directed to lead the evidence however the Civil Court was to decide the admissibility of the secondary evidence at the time of finally deciding the suit. Reply was filed to the application under Order XVIII Rule 17 CPC. Vide the impugned order the application has been allowed.

3. Learned counsel for the defendant No.1-petitioner would contend that firstly there is no pleading whatsoever regarding the Will of

Kartar Singh dated 23.11.1994. The same is neither under challenge in the suit nor does the same finds any mention in the written statement. If at all the plaintiff-respondents were to challenge the said Will they would need to amend their pleadings and thereafter lead evidence with regard to the same. The Will of Kartar Singh dated 23.11.1994 has not been set up by the defendant No.1-petitioner in the written statement. Infact, there is no dispute regarding the Will of Kartar Singh dated 23.11.1994. Learned counsel for the petitioner has further contended that the provisions of Order XVIII Rule 17 CPC are to enable a Court to recall a witness at any stage and put such questions as the Court may deem fit. The said provision is not intended to be used to fill up the omissions in the evidence or to fill in the lacuna. In support of his argument, learned counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court in case of **K.K. Velusamy Vs. N. Palanisamy [2011 (11) SCC 275]**.

4. *Per contra* learned counsel for the plaintiff-respondents would contend that the Will was not in knowledge of the plaintiff-respondents as it was for the first time during cross-examination of DW2 Ramesh Chander that it came to the notice of the plaintiff-respondents that there was a Will of even date which had been executed by Kartar Singh, who is the elder brother of Tara Singh. Learned counsel for the plaintiff-respondents has further contended that the said Will was proved as secondary evidence and therefore the said document was to be put to DW2 and DW3.

5. Heard.

6. In the present case there is no dispute regarding the Will of Kartar Singh which has been raised by either of the parties. Admittedly, there is no challenge which has been laid by the plaintiff-respondents to the

Will of Kartar Singh. The learned counsel for the plaintiff-respondents has candidly admitted that neither any application for amendment has been moved to challenge the Will of Kartar Singh nor are there any pleadings even remotely referring to the Will of Kartar Singh. The cross-examination of DW2 Ramesh Chander was closed on 06.02.2015. The argument of learned counsel for the plaintiff-respondents is that the fact regarding the Will came to the knowledge of the plaintiff-respondents during the cross-examination of the said witness and therefore the application for secondary evidence was moved. It is to be noted that the application for secondary evidence was also moved only in the year 2018 i.e. after a gap of three years of having cross-examined DW2 Ramesh Chander. No doubt the application under Section 65 of the Indian Evidence Act, 1872 has been allowed vide order dated 22.08.2023 passed in CR-4540-2018 however the admissibility of the said evidence is to be decided at the time of the final decision of the suit. It is trite that in the absence of any pleadings no amount of evidence can be looked into. In the present case it is not the case set up by the plaintiff-respondents that there were two Wills executed on the same date that too in favour of the defendant No.1-petitioner and therefore an adverse inference should be drawn against the defendant No.1-petitioner. Rather, the challenge is only to the Will of Tara Singh which is a registered Will dated 23.11.1994.

7. Further still, Hon'ble Supreme Court in the case of **Ram Rati Vs. Mange Ram (D) thr LRs & Ors. [2016 (2) RCR (Civil) 464]**, after considering the various judgments, has held as under:

“12. In Vadiraj Naggappa Vernekar (Dead) Through LRs. v. Sharadchandra Prabhakar Gogate 2009(2) RCR

(Civil) 508: (2009) 4 SCC 410, this principle has been summarised at paragraphs- 25, 28 and 29:

“25. In our view, though the provisions of Order 18, Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

xxx

28. The power under the provisions of Order 18, Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18, Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18, Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated herein above, such power is to be invoked not to fill up the lacunae in the

evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”

13. *In K.K. Velusamy v. N. Palanisamy 2011(2) RCR (Civil) 875 : 2011(3) Recent Apex Judgments (R.A.J.) 83 : (2011) 11 SCC 275, the principles enunciated in Vadiraj (supra) have been followed, holding at paragraphs 9 and 10:*

“9. Order 18, Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18, Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate.)

10. Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18, Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

xxx

18. The settled legal position under Order 18, Rule 17 read with Section 151 of the CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law.”

8. In view of the above, the impugned order is not sustainable in law and the same is accordingly set aside. Accordingly, the present revision petition is allowed and consequently the application filed by the plaintiff-respondents under Order XVIII Rule 17 CPC for recalling the witnesses i.e. DW2 Ramesh Chander and DW3 Pal Singh stands dismissed.

9. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

10. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

19.08.2025
jk

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO