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CS 2539/16

RAJNI KAKKAR@MUNNA Vs. GURBACHAN SINGH AND
ORS.

08.01.2025

Present : Sh. Brijesh Singh, Ld. Counsel for plaintiff (through
VC).
Sh. Juned Salmani, Ld. Counsel for the defendant
no.1 and 2 and also for LR's no. 4, 6, 7 of defendant
no.3 alongwith Sh. Kuldeep Singh, son of defendant
no.1 and Sh. Chand Singh, son of defendant no.2.

Matter is fixed for order on application under
Section 151 CPC filed on behalf of GPA holder of defendant no.
1 and 2 i.e. Sh. Kuldeep Singh to examine him as defendants'
witness in place of defendants.

It is stated by Ld. Counsel for the defendants that he
does not wish to examine witnesses mentioned at Sr. no. 1/Sh.
Gurbachan Singh and 2/Sh. Chand Singh in the list of witnesses
as they are more than 70 years old and facing hardship in
understanding things properly because of their poor health; that
defendants are seeking permission from the court to examine the
son of defendant no.1 namely Sh. Kuldeep Singh in place of
defendants as defendant no. 1 and 2 already executed GPA dated
05.11.2024 in favour of Sh. Kuldeep Singh; that the Sh. Kuldeep
Singh, son of defendant no.1 is well aware with the present case;
that if the opportunity has been granted to defendants to examine
the son of defendant no.1/Sh. Kuldeep Singh as witness, no harm

will be caused to the plaintiff. It is prayed that the present application may be allowed.

Ld. Counsel for the plaintiff has filed reply to the present application opposing the application and stating that the present application is devoid of merits as applicant/POA holder Sh. Kuldeep Singh has already been allowed to depose before the court as additional witness; that the defence of the defendant no. 1 and 2 could be proved by way of additional witness/Sh. Kuldeep Singh and there is no legal compulsion on Sh. Kuldeep Singh to come as substituted witness or on behalf of defendant no.1 and 2 to prove facts in his knowledge; that defendant no. 1 and 2 are important witnesses and their prevention from being subjected to cross-examine will result into failure of court to reach logical conclusion and will lead travesty of justice; that defendants in the present matter are 70 year old and have executed their POA in favour of applicant suggesting their mental health in good condition, hence, the present application may be dismissed as not maintainable.

Submissions heard. Record Perused.

Vide order dated 27.11.2024, the application under Order XLVII under Section 114 r/w Section 151 CPC filed on behalf of plaintiff was allowed wherein it has been clarified by this court that Sh. Kuldeep Singh can be examined as one of the defendants' witness. Further, any witness can be examined by the defendants as defendants witness who has personal knowledge in

the matter to prove the defence of the defendants'. Sh. Kuldeep Singh can appear as a defendant witness in his personal capacity and he can depose in the matter based on whatever personal knowledge he has about the present matter. However, he cannot appear as a witness on behalf of a party (i.e. defendants) in the capacity of that party.

Furthermore, GPA in favour of Sh. Kuldeep Singh executed by defendant no. 1 and 2 has already been filed on judicial record. Subject to law laid down by Hon'ble Supreme Court in the Judgment of Janki Vashdeo Bhojwani & Anr. vs. Indusind Bank Ltd. & Ors. (AIR 2005, SC 439), Sh. Kuldeep Singh can depose as defendants witness. Therefore, no direction/order can be passed to allow defendants to examine Sh. Kuldeep Singh in place of defendant no. 1 and 2.

In view of aforesaid observation, the instant application under Section 151 of CPC stands dismissed.

Put up for DE on **29.01.2025**.

(SOMITRA KUMAR)
DJ-06 : EAST DISTRICT
KKD COURTS, DELHI
08.01.2025