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CS 2539/16

RAJNI KAKKAR@MUNNA Vs. GURBACHAN SINGH AND
ORS.

09.04.2025

Present : Sh. Rajeev Kapoor, Sh. Brijesh Singh and Ms.
Shalini Rawat, Ld. Counsel for the plaintiff with
plaintiff.
Sh. Himal Akhtar, Sh. Unais and Sh. D.D. Sharma
Ld. Counsel for the defendant no. 1 and 2 and also
for LRs no. 4, 6 and 7 of deceased defendant no. 3
alongwith son of defendant no.1/Sh. Kuldeep Singh
and son of defendant no.2/Sh. Montu.
None for other LRs of deceased defendant no. 3.

Matter is fixed for final arguments.

At this stage, an application moved on behalf of the
defendant no. 1 under Section 151 CPC r/w Order 26 Rule 9 r/w
Section 151 CPC for seeking permission to examine defendant no.1
as witness by appointment of local commissioner.

Reply to the said application is filed. Copy supplied to
opposite party.

Arguments heard on the said application.

It is submitted on behalf of the defendant no.1 that
defendant no. 1 unable to understand things property as his hearing
power is low due to his old age, but he can read if anyone write and
then read the question loudly in front of him and after
understanding the question, he can answer the same, however, the
said process will take time, therefore, defendant no.1 seeks
permission from the court to examine defendant no.1 as witness by
appointing local commissioner for recording his evidence and

further undertakes to bear all the expenses of Ld. Local Commissioner himself; that evidence of defendant no.1 is necessary to end the litigation between plaintiff and defendants and to ascertain the truth; that evidence is valuable right of the defendant no.1 and if the present application is not allowed, then the valuable right of the defendant no.1 will be curtailed and great prejudice will be caused to the defendant no. 1; that no prejudice will be caused to the plaintiff if the present application for appointment of Ld. Local Commissioner for recording evidence of defendant no.1 is allowed. Therefore, it is prayed that the present application may be allowed.

Reply to the present application filed on behalf of the plaintiff and vehemently opposing the present application stating that the present application filed by the defendant no.1 is a gross abuse of process of law as the defendants could have come forward, deposed and faced cross-examination by way of appointment of local commissioner on earlier occasions; that the instant application has been filed by defendant no.1 not defendant no.2 suggesting the ulterior motive to delay and prolong the trial; that defendant no. 1 and 2 had on earlier occasions filed medical documents to prove their incapacity in understanding and comprehend things mentioning grounds of permanent ailments and old age of defendants and had vehemently argued that they are unfit to depose before the court and they did not prefer to move the present application and defendant no. 1 and 2 by way of PoA issued in favour of defendant no.1's son/Sh. Kuldeep Singh and declaration by Kuldeep of having full and complete knowledge of the facts in the present matter is sufficient to deny defendant no.1 to examine

himself by way of Ld. Local Commissioner. Therefore, it is prayed that the present application be dismissed with heavy cost.

At this stage, Ld. Counsel for the defendant no. 1 and 2 and also for LRs no. 4, 6 and 7 of deceased defendant no. 3 upon instructions from defendants submits that defendant no. 1 and 2 and LRs no. 4,6, 7 of deceased defendant no.3 will not examine any other witness after examining the defendant no.1.

It is submitted on behalf of the son of defendant no.1 and GPA holder of defendant no.1 and 2 that defendant no. 1 and 2 will not examine any other witness after examining the defendant no.1.

Separate statement of Ld. Counsel for the defendant no. 1 and 2 and also for LRs no. 4, 6 and 7 of deceased defendant no. 3 and son of defendant no. 1 and GPA holder of defendant no.1 and 2 have been recorded in this regard.

Submissions heard. Record perused.

There is no doubt that defendant no.1 and 2 has taken contradictory stand regarding their deposition in the present matter, however, now it is the case of the defendant no.1 that he can depose as defendant witness if questions to be asked are shown in writing to him and the questions are asked from him in a loud voice.

Further, no prejudice would be caused to the plaintiff if the present application is allowed. The plaintiff shall have adequate opportunity to cross-examine the defendant no.1. Therefore, in view of the submissions and in the interest of justice, the present application is allowed subject to cost of Rs.8000/- to be paid to the plaintiff.

Moreover, in view of health condition of defendant no.1, the prayer of defendant no.1 to allow his examination through Ld. Local Commissioner is also allowed.

Sh. Sunil Kumar Kasana, (mobile no. 9971406841), Enrl. No. D/6002/2018, Chamber No. F-703/704, KKD Courts, Delhi-32. appointed as Local Commissioner for recording evidence of defendant no.1 to be conducted in the chamber of Ld. Counsel for the defendant no. 1 and 2 and also for LR's no. 4, 6 and 7 of deceased defendant no. 3 at Chamber no. T-16, Tis Hazari Courts, Delhi on the dates fixed by Ld. Local Commissioner.

The dates shall be given by the local commissioner as per the convenience of all concerned. As and when the evidence is to be recorded, same be intimated to the parties concerned.

The fee of the local commissioner is fixed at Rs.10,000/- per sitting. Defendant no. 1 shall bear the expenses of Ld. Local Commissioner for recording his evidence.

Ahlmad/Nazir/Reader shall make himself/herself available with court file and diet money for said purpose fixed as Rs. 1000/- per visit.

Ld. Local Commissioner shall record verbatim in question and therefore, record answer verbatim. In case there is objection, the said objection shall be recorded verbatim which shall be adjudicated by the court.

After the deposition is recorded by the local commissioner, all the record shall be transmitted to the court forthwith or by the NDOH.

Ld. Local Commissioner shall supply the copy of evidence recorded to both the parties at their cost.

Ld. Local Commissioner shall submit typed or original version of the proceedings in the court.

In case any parties seek adjournment or recording of evidence is adjourned then the party at fault shall pay the expenses of commission for the said date.

Both the parties inform the Ld. Local Commissioner for the date.

Parties are directed to appear before Ld. Local Commissioner on the date they agreed upon.

Whatever costs is incurred by the local commissioner, same shall be included in the costs of the suit. The defendant's evidence may be completed within 20 days from the date of appointment of Ld. Local Commissioner.

Put up for filing of report of Ld. Local Commissioner alongwith record of examination of defendant no.1 on **03.05.2025**.

Copy of order be given to Ld. local commissioner.

(SOMITRA KUMAR)
DJ-06,EAST/ KKD COURTS
DELHI/09.04.2025 (s)