

Vasdev Singh Vs. Inderdev Singh etc. CS 827/2015

Present: Sh. Vikas Jain, counsel for plaintiff.
Sh. Vaneesh Khanna, counsel for defendants no. 1 and 3.
Ms. Preeti Nigam, counsel for defendant no. 2.
Defendant no. 6 in person.
Sh. Ashwani Talwar, counsel for defendant no. 7.
Sh. SC Mehta, counsel for defendants no. 8 and 9.
Sh. Vansh Malhotra, counsel for defendant no. 10.
Name of defendant no. 11 is deleted.
Defendants no. 4 and 5 exparte.

Heard on the application under Order 18 rule 17 read with Section 151 CPC moved by the plaintiff for recalling DW-3 Inderdev Singh for his further cross examination.

2. It is argued by Ld. Counsel for the plaintiff that both the parties have led their evidence and defendant no.1 stepped into witness box as DW-3 and tendered his affidavit as examination in chief on dated 9.10.2018 and was cross examined on various occasions and the same was concluded on dated 21.03.2023. It is further submitted that plaintiff is a USA resident and he was not present on each and every date of hearing of this case though he attended some dates and he was not present on every date when DW-3 Inderdev Singh was cross examined in the present case. It is further submitted that DW-3 Inderdev Singh in his cross examination has denied the existence of any HUF property and has claimed that all the properties in dispute are self acquired properties of

Kartar Singh Rai and are not the properties of Kartar Singh Rai HUF and that the plaintiff has already withdrawn from HUF in terms of oral settlement. DW-3 has further stated in his cross examination that he is not in possession of income tax returns of Kartar Singh Rai HUF, as such the said income tax returns were not produced by the said witness. Now, when the case was fixed for arguments and while preparing written synopsis it has come to the notice of the counsel for the plaintiff that income tax returns of Kartar Singh Rai, HUF are very much relevant to prove the characteristics of various properties of Kartar Singh Rai HUF. It is then only counsel for the plaintiff got knowledge that certain income tax return which were to be put to defendant no.1 being signatory as well as signed by Dr. Kartar Singh Rai being Karta as well as in his individual capacity during his cross examination but the same have been left out as the same were not available in the case file which were received by him from the office of the previous counsel. In this way, income tax returns could not be put to the defendant no.1 during his cross examination. Now, the plaintiff is in possession of income tax return of Kartar Singh Rai HUF and the same are very much relevant for proper adjudication of the present case . Hence, it is prayed that present application may kindly be allowed and DW-3 may kindly be recalled for his further cross examination for putting the ITRs in his cross examination. Learned counsel for the plaintiff has relied upon the

judgments in support of his arguments which are **K.K.Velusamy vs N. Palanisamy 2011 AIR SC (Civil) 1000; Roshan Lal vs Ram Bai and others 2024 NCPHHC 3258; Suresh Kumar va Babita and others Law Finder Doc Id # 2433802; Babu Ram vs Sanjeev Gogna and another 2024 (1) RCR (Rent)170; Balwinder Singh vs Subeg Singh and another Law Finder Doc Id @ # 2338312; Satnam Kaur vs Sukhjit Singh and Ors Law Finder Doc ID # 2141633 and Iffco Tokio General Insurance Company Ltd vs Aparna Apte Gupta and others Law Finder Doc ID # 2126534.**

3. Upon reply, application of the plaintiff has been opposed by the defendants no. 1 to 3 on the grounds that the same is not maintainable and has been filed just to delay the proceedings of the case. It is further argued that both the parties have concluded their evidence and the case is fixed for final arguments. Now the present application has been filed just to fill the lacuna in the case of plaintiff. It is further argued that DW-3 was cross examined on various dates by the learned counsel for the plaintiff and the income tax returns were very much in the knowledge of the plaintiff when the case was going on for his cross examination. It is further argued that the plaintiff himself had annexed the copies of Income Tax Returns pertaining to Kartar Singh Rai (HUF) along with plaint at the time of filing of the suit and these documents were in the knowledge of the plaintiff in the very inception. Further, plaintiff deposited the diet money of

the witness of the income tax department for producing the ITRs at the time when the case was fixed for plaintiff evidence. On merits, rest of the averments have been wrong and denied. It is, thus, prayed that the application be dismissed.

4. I have heard learned counsel for both the parties and have perused the case file very carefully.

5. The present application under Order 18 rule 17 read with Section 151 CPC has been moved by the plaintiff for recalling DW-3 Inderdev Singh for his further cross examination.

6. Perusal of the file shows that the present suit was filed by the plaintiff in the year 2015 for seeking the relief of separate possession, declaration and permanent injunction regarding the properties fully detailed and described in the schedule attached with the plaint. The issues in the present case were framed on dated 20.04.2017 and the case was fixed for evidence of the plaintiff and numerous opportunities were granted to the plaintiff to conclude his evidence and ultimately the evidence of the plaintiff was closed by order on dated 30.07.2018 after that defendants led their evidence and case was fixed for arguments.

7. Defendant no.1 Inderdev Singh stepped into witness box as DW-3 and he tendered his affidavit in his examination in chief on dated 09.10.2018 and his cross examination was deferred and he was partly cross examined

on 15.3.2019, 28.03.2019, 07.05.2019, 26.08.2019, 02.09.2019, 06.09.2019, 11.09.2019, 18.09.2019, 10.10.2019, 30.01.2020 and finally his cross examination was completed by learned counsel for the plaintiff on 21.03.2023. Meaning thereby the learned counsel for the plaintiff cross examined the DW-3 on eleven dates extensively. Moreover, when the present suit was filed by the plaintiff, he attached the above noted ITRs along with his plaint in the year 2015. further, plaintiff also deposited the diet money for proving these ITRs by summoning the official clerk/income tax office Chandigarh when the case was fixed for evidence of the plaintiff. Meaning thereby these documents are in existence at the time of filing of the present suit and before the evidence of the plaintiff and these ITRs were very much available when the cross examination of defendant no.1 was going on. Now, the plaintiff cannot take the plea that ITRs were not available with him at the time of cross examination of defendant no.1 which started in the year 2018 and concluded in the year 2023. The plaintiff cannot claim that these documents are not in his knowledge earlier. These documents could have been put to the DW-3 in his cross examination. It appears that this application has been filed just to delay the present case and to fulfill the lacuna in the case of plaintiff. The plaintiff had ample time to put the ITRs to DW-3. The judgments relied upon by the counsel for the plaintiff are not applicable to the facts of the present case.

8. In view of above discussion, the application stands *dismissed*. However, nothing contained herein shall be construed as an opinion on the merits of the case.

Date of order: 29.05.2025

(Ajay)PCS
Civil Judge(Jr.Division)
CHD (UID No. PB0629

Shalu

Stenographer Gr. II

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Sh. Vansh Malhotra, counsel for defendant no. 10.
Name of defendant no. 11 is deleted.
Defendants no. 4 and 5 exparte.

Heard on the application for grant of permission to lead rebuttal evidence moved by the plaintiff.

2. It is argued by Ld. Counsel for the plaintiff that both the parties have led their evidence and defendant no.1 stepped into witness box as DW-3 and tendered his affidavit as examination in chief on dated 09.10.2018 and was cross examined on various occasions and the same was concluded on dated 21.03.2023. It is further submitted that plaintiff is a USA resident and he was not present on each and every date of hearing of this case though he attended some dates and he was not present on every date when DW-3 Inderdev Singh was cross examined in the present case. It is further submitted that DW-3 Inderdev Singh in his cross examination has denied the existence of any HUF property and has claimed that all the properties in dispute are self acquired properties of Kartar Singh Rai and are not the properties of Kartar Singh

Rai HUF and that the plaintiff has already withdrawn from HUF in terms of oral settlement. DW-3 has further stated in his cross examination that he is not in possession of income tax returns of Kartar Singh Rai HUF, as such the said income tax returns were not produced by the said witness. Now, when the case was fixed for arguments and while preparing written synopsis it has come to the notice of the counsel for the plaintiff that income tax returns of Kartar Singh Rai, HUF are very much relevant to prove the characteristics of various properties of Kartar Singh Rai HUF. It is then only counsel for the plaintiff got knowledge that certain income tax return which were to be put to defendant no.1 being signatory as well as signed by Dr. Kartar Singh Rai being Karta as well as in his individual capacity during his cross examination but the same have been left out as the same were not available which were received by him from the office of the previous counsel. In this way, income tax returns could not be put to the defendant no.1 during his cross examination. It is further argued that it is necessary to rebut the statement of DW-3 Inderdev Singh, who is now acting as Karta of Kartar Singh Rai, HUF and further to rebut the evidence led by the defendants, the plaintiff intends to examine and summon concerned official from Income Tax Department and Sh. Manohar Vohra, CA in rebuttal evidence to produce the Income tax Returns to Kartar Singh Rai HUF from the assessment year 2008-09 onwards till 2017-18. These ITRs

are very much relevant for proper adjudication of the present case. Hence, it is prayed that present application may kindly be allowed plaintiff may kindly be permitted to lead rebuttal evidence by summoning the above noted witnesses.

3. Upon reply, application of the plaintiff has been opposed by the defendants no. 1 to 3 on the grounds that the same is not maintainable and has been filed just to delay the proceedings of the case. It is further argued that both the parties have concluded their evidence and the case is fixed for final arguments. Now the present application has been filed just to fill the lacuna in the case of plaintiff. It is further argued that the plaintiff himself had annexed the copies of Income Tax Returns pertaining to Kartar Singh Rai (HUF) along with plaint at the time of filing of the suit and these documents were in the knowledge of the plaintiff in the very inception. Further, plaintiff deposited the diet money of the witness of the income tax department for producing the ITRs at the time when the case was fixed for plaintiff evidence. On merits, rest of the averments have been wrong and denied. It is, thus, prayed that the application be dismissed.

4. I have heard learned counsel for both the parties and have perused the case file very carefully.

5. The present application has been moved by the plaintiff for grant of permission to lead rebuttal evidence moved by the plaintiff.

6. Perusal of the file shows that the present suit was filed by the plaintiff in the year 2015 for seeking the relief of separate possession, declaration and permanent injunction regarding the properties fully detailed and described in the schedule attached with the plaint. The issues in the present case were framed on dated 20.04.2017 which are as under :

1. Whether the Plaintiff is entitled to relief of possession of $\frac{1}{2}$ share in the suit property by way of partition as prayed for?OPP
2. Whether the plaintiff is entitled to relief of declaration as prayed for?OPP
3. Whether the plaintiff is entitled for the relief of rendition of accounts as prayed for?OPP
4. Whether the present suit is bad for non joinder of necessary parties? OPD
5. Whether the present suit is barred by limitation?OPD
6. Whether the present suit is not maintainable in the present form?OPD
7. Whether the plaintiffs have not approached the court with clean hands? OPD
8. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
9. Relief.

Thereafter, following additional issues were framed on 21.01.2020:

1. Whether the Plaintiff is entitled to relief of possession of $\frac{1}{2}$ share in the suit property by way of partition as prayed for?OPP
2. Whether the plaintiff is entitled to relief of declaration as prayed for?OPP
3. Whether the plaintiff is entitled for the relief of rendition of accounts as prayed for?OPP
4. Whether the plaintiff is in possession of Joint Hindu Family Property and whether the plaintiff is in constructive Joint possession of Joint Hindu Family Property?OPP
5. Whether the present suit is bad for non joinder of necessary parties? OPD
6. Whether the present suit is barred by limitation?OPD
7. Whether the present suit is not maintainable in the present form? OPD
8. Whether the plaintiffs have not approached the court with clean hands? OPD

9. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
10. Whether the plaintiff is required to affix ad valorem court fee as per the value of the property, for which the plaintiff is seeking possession by way of the present suit?OPD
11. Relief

7. Since the onus to prove issues no. 1 to 4 which were framed on dated 21.01.2020 was upon the plaintiff and he began his evidence. Numerous opportunities were granted to the plaintiff to conclude his evidence and ultimately the evidence of the plaintiff was closed by order on dated 30.07.2018 after that defendants led their evidence and case was fixed for arguments.

8. Now, the plaintiff wants to lead rebuttal evidence by calling concerned official from Income Tax Department and CA Sh. Manohar Vohra in respect of ITRs. It is relevant to mention here that when the present suit was filed by the plaintiff, he attached the above noted ITRs along with his plaint in the year 2015. Further, plaintiff also deposited the diet money for proving these ITRs by summoning the official clerk/income tax office Chandigarh when the case was fixed for evidence of the plaintiff. Meaning thereby, these documents were in existence at the time of filing of the present suit and before the evidence of the plaintiff. The plaintiff cannot claim that these documents are not in his knowledge earlier. There is lack of due diligence on the part of the plaintiff as these documents could have been proved by the plaintiff when the case was going on for his evidence

which was ultimately closed by order by the Court on dated 30.07.2018 after availing numerous opportunities. It appears that this application has been filed just to delay the present case and to fulfill the lacuna in the case of plaintiff. The plaintiff had ample time to produce ITRs in original when the case was going on for his evidence. The plaintiff cannot be permitted to lead evidence in rebuttal with regard to the ITRs which ought to have been tendered when the case was going on for his evidence. Further, the plaintiff filed the application under Section 151 of CPC for leading additional evidence with regard to these ITRs and the same has already been dismissed vide order dated 21.01.2025 .

9. In view of above discussion, the application stands *dismissed*. However, nothing contained herein shall be construed as an opinion on the merits of the case.

Date of order:
29.05.2025

(Ajay)PCS
Civil Judge(Jr.Division)
CHD(UID No.PB0629

Shalu
Stenographer Gr.I

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Name of defendant no. 11 is deleted.
Defendants no. 4 and 5 exparte.

Today it has come to the notice of the undersigned that in the last zimni order the next date of hearing has been wrongly mentioned as 30.05.2025 whereas the case was fixed for today i.e. 29.05.2025. The mistake is rectified accordingly.

Arguments heard. Vide separate detailed orders of even date application filed under Order 18 rule 17 read with Section 151 CPC for recalling DW-3 Inderdev Singh for his further cross examination and application for grant of permission to lead rebuttal evidence moved by the plaintiff stand dismissed.

Now, the case stands adjourned to 11.07.2025 for arguments.

Date of order:
29.05.2025

(Ajay)PCS
Civil Judge(Jr.Division)
CHD(UID No. PB0629)

Shalu
Stenographer Gr.I