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CR-1848-2019 (O&M)

**267 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1848-2019 (O&M)**Reserved on : 20.05.2026****Pronounced on : 09.07.2026****Uploaded on : 09.07.2026*****Whether only operative part of the judgment is pronounced? No******Whether full judgment is pronounced? Yes***

Col. Manpreet Singh

...Petitioner

Versus

Sham Lal and others

....Respondents

Coram : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Aalok Jagga, Advocate and
Mr. Karan Inder Singh, Advocate
for the petitioner.

Ms. Ameesha Goel, Advocate for
Mr. Siddharth Sharma, Advocate
for respondents No.2, 6, 8 and 9.

PANKAJ JAIN, J.

Instant revision petition is directed against order dated 21.11.2018, passed by Civil Judge (Junior Division) Kapurthala, whereby the trial court while allowing the application filed by defendants under Section 151 CPC, has struck off the examination-in-chief tendered by way of affidavit dated 02.07.2018.

2. Plaintiffs filed suit seeking separate possession to the extent of 1/8th share of the suit property after partition thereof by metes and bounds.



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As per plaintiffs, they are Class I legal heirs of deceased Kishan Singh son of Amar Singh. Amar Singh expired in the year 2008, leaving behind five sons and three daughters. Kishan Singh, one of the sons of Amar Singh, died in the year 2014. Plaintiffs claimed themselves to be entitled to 1/8th share along with defendant Nos.4, 6 and 7 and alleged that defendant Nos.1 to 5 together are entitled to 1/8th share in the suit property.

3. Suit is being contested by defendants. Petitioner/Plaintiff No.3 appeared as PW3 and tendered in evidence his examination-in-chief by way of affidavit dated 02.07.2018. The same has been placed on record as Annexure P-13. Defendants filed the instant application under section 151 CPC seeking striking off the examination-in-chief of petitioner claiming that the documents relied upon by the plaintiffs are beyond pleadings. Para 3 of the application filed by defendants reads as under:-

“3. That the plaintiff no.1 Sarjit Kaur appeared as a witness for the plaintiffs and she has been cross examined at length and her cross examination was completed on 06.02.2018. The defendants applicants have opened the card and put the question to Sarjit Kaur. Now in order to fill up the lacunas and to cover up the dents happened in the statement of Sarjit Kaur, plaintiffs after availing of so many opportunities have tendered the examination in chief in the shape of affidavit of Col M.S. Baghi who is plaintiff no.3. The lacunas cannot be filled up at this stage and as per law, the affidavit of the statement of the plaintiff who are not in dispute in any manner, with anyone, and whose interest are common cannot be filled up, as there is no provision of law to fill up the lacuna. The documents which have been mentioned in the affidavit of Col M.S. Baghi are beyond pleadings. Evidence beyond pleading cannot be led. Moreover, the copies of the same have not supplied to the



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applicants/defendants. The cross of Sarjit Kaur is already on record and plaintiffs have already seen the line of action of defendants/applicants.”

4. Petitioner filed reply to the application. Para 3 thereof reads as under:-

“3. It is admitted to the extent that Sarjit Kaur has already appeared as witness in the witness box and have tendered her Examination-in-Chief in the shape of affidavit and has already been cross examined. It is denied that the defendants/applicants have opened their card by putting their defence in the cross examination. In fact the defence is already open by way of written statement. It is denied that now in order to fill up the lacuna in the case or to cover up dent allegedly made in the statement of Sarjit Kaur the plaintiffs after availing so many opportunities have tendered Examination-in-Chief in the shape of affidavit of Col. M.S. Baghi PW3 there is no question of filling up the lacuna in the evidence of the plaintiffs as the plaintiffs have not yet completed their evidence and the matter is still pending for the plaintiffs evidence. The plaintiff no.3 who is witness to the document exhibited by him in Examination-in-Chief in the shape of affidavit was required to be examined to prove this document and not to fill up the lacuna as being suggested by the defendants/applicants. It is denied that the lacuna cannot be allowed to fill up as per law at this stage. It is denied that the affidavit of statement of the plaintiff, who are allegedly not in dispute in any manner with anyone and whose interest are common cannot be filled up as alleged. It is denied that there is any attempt to fill up the lacuna. It is denied that the document, which are mentioned in the affidavit of Col. M.S. Baghi are beyond pleadings. There is no question of pleading of other document as there are to negate the defence which defendants have taken in their written statement. It is denied

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that the copy of the documents referred in the Examination-in-Chief in the shape of affidavit of Col. M.S. Baghi have not been supplied. However the defendants no.1 to 7/applicants can get the copy again if they so required. It is denied that the cross examination of Sarjit Kaur plaintiff have seen the line of action of defendants/applicants.”.

5. Trial Court vide impugned order allowed the application filed by defendants observing as under:

“5. To my mind, the power u/s 151 CPC is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendment to the Code to expedite trials. But where the application is found to be bona-fide and it will assist the Court to clarify the evidence on the issues and will assist in rendering justice, and the Court is satisfied that such striking off the examination in chief in the shape of affidavit was not valid and sufficient reasons, the Court may exercise its discretion to permit to striking off the examination in chief in the shape of affidavit from record by the witness who has produced the same on record U/S 151 CPC. But if does so it should ensure that, the process does not become a protecting tactic. From perusal of the materials placed on record by both the parties till the date of filing of such application, this Court is satisfied that the application was filed upon reasonable and justifiable ground and for want of bona-fide on his part and to have acted diligently or remained active that can be justified to allow the application because the law under section 151 of the CPC is liberal and to meet the ends of justice. To my mind, to strike off the examination-in-chief in the shape of affidavit dated 2.7.2018 of Col. M.S.Baghi from record on behalf of defendant no.1,2 and 7 is curable and not fatal.

6. In order to fortify my view, I take support from the case law



titled as “Harnarain Vs Vinod Kumar” A 1987 A 319. inherit power exercised U/s 151 of CPC are not intended to enable a Court to create rights in the parties, but they are meant to enable the Court to pass such order for the end of justice as may be necessary considering the rights which are conferred upon the parties by substantive law.

7. Therefore, in the interest of justice, such application U/o 151 CPC to strike off the examination-in-chief in the shape of affidavit dated 2.7.2018 of

Col. M.S.Baghi from record on behalf of defendant no.1,2 and 7 stands allowed because the power u/s 151 CPC can be exercised if ends of justice so warrant to prevent abuse of process of the Court and court can exercise its description. Thus, in the interest of justice, the present application is allowed and disposed off.”

6. Having heard counsel for the parties and after perusing the records of the case, this Court finds that the impugned order cannot be sustained for more than one reason. No findings have been recorded in the impugned order by the Court on which inherent power under section 151 CPC has been invoked. Needless to mention that after amendment incorporated by The Code of Civil Procedure (Amendment) Act, 2002, Order XVIII CPC stands amended and Rule 4 stands substituted. As per the new provisions, the examination-in-chief of the witness is required to be on affidavit and the documents if filed along with, the proof of admissibility of such documents is subject to the orders of the Court. Chapter X of the Evidence Act, 1872 deals with examination of witnesses. Section 136 thereof casts an obligation upon the Presiding Judge to decide admissibility of evidence. However, there is no provision in law that provides for striking off evidence on the ground that the same is beyond pleadings once the

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evidence has been tendered.

7. There is no quarrel with the proposition that the evidence beyond pleadings shall not be entertained. However, the examination-in-chief having been recorded by way of affidavit in terms of Order XVIII Rule 4 CPC, there is no power vested with the Court to strike off the same.

8. In view of above, this Court finds that the impugned order passed by the trial Court cannot be sustained. However, it is clarified that it will be open for the defendants to argue at the relevant point of time that the evidence led by plaintiffs beyond pleadings be not considered.

9. With the aforesaid observations, the present revision petition is ***allowed*** and the impugned order dated 21.11.2018 is set aside.

10. All pending miscellaneous application(s), if any, stands *disposed off*.

July 09, 2026
ashish

(PANKAJ JAIN)
JUDGE

Whether speaking/ reasoned : *Yes/No*
Whether reportable : *Yes/No*