

**Simrin Singh vs.amrit Srinivasan & Anr**

**Simrin Singh vs.amrit Srinivasan & Anr**

**SooperKanoon Citation :** [sooperkanoon.com/1212242](http://sooperkanoon.com/1212242)

**Court :** Delhi

**Decided On :** Jan-23-2018

**Appellant :** Simrin Singh

**Respondent :** Amrit Srinivasan & Anr

**Advocate for Def. :** Mr. Y.P. Narula, Mr. Abhey Narula, Mr. K.R. Chawla

**Advocate for Pet/Ap. :** Mr. Abhijat, Mr. Rishabh Bansal, Ms. Dakshaa Arora, Mr. Ajay Arjun Sharma

**Judgement :**

\* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

23. d January, 2018. SIMRIN SINGH CS(OS) 2258/2010 ..... Plaintiff Through: Mr. Abhijat, Mr. Rishabh Bansal, Ms. Dakshaa Arora and Mr. Ajay Arjun Sharma, Advs. versus AMRIT SRINIVASAN & ANR ..... Defendants Through: Mr. Y.P. Narula, Sr. Adv. with Mr. Abhey Narula, Adv. for D-1&2. Mr. K.R. Chawla, Adv. for D-3. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 The suit is listed before this Court in terms of order dated 6th January, 2018 of the Joint Registrar.

2. Though commission for recording of evidence has been issued in this suit, stated to be consolidated with some other proceedings, but the cross- examination of PW-3, being a witness to a document claimed to be a Will, was ordered to be recorded before the Joint Registrar.

3. Cross-examination has been completed. The counsel for the plaintiff however sought to re-examine PW-3 and which was objected to by the senior counsel for the defendants no.1&2. Hence the Registrar has placed the matter before this Court.

4. The counsel for the plaintiff has taken me to the three portions of cross-examination conducted of PW-3 on 13th December, 2017 and thereafter to remaining cross-examination of the said witness on 6th January, 2018 and has contended that re-examination is required for clearing/removing the ambiguities which have been introduced owing to CS(OS) 2258/2010 Page 1 of 5 advance age of 85 years of the subject witness. Attention is invited to Section 138 of the Evidence Act, 1872 which provides that re-examination shall be directed to explanation of matters referred to in cross-examination and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter. It is contended that the plaintiff is not intending to introduce any new matter and has a right to clear the ambiguities without even seeking permission of the Court. It is stated that ambiguities in the reply to the questions recorded on internal page 3 of the cross-examination of 6th January, 2018 are required to be removed by showing the document claimed to be the Will, to the witness. Reliance is placed on paras 16 to 19 of Rammi @ Rameshwar Vs. State of Madhya Pradesh AIR 1999 SC3544 and on para 4 of Tarun Khurana Vs. Krishna Mittal 2012 SCC OnLine Del 3657, Pannayar Vs. State of T. Nadu by Inspector of Police (2009) 9 SCC52 Shrikant Mantri Vs. Savitri Devi Manti 2015 SCC OnLine Cal 2931, Rajaram Prasad Yadav Vs. State of Bihar (2013) 14 SCC461 and State of West Bengal Vs. Arunesh Pathak 1999 SCC OnLine 376.

5. PW-3 is a witness to prove the document claimed to be the Will and on going through his deposition, I am of the view that what the plaintiff is seeking to do by way of re-examination is to take away the advantage if any which has accrued to the defendants no.1&2 from the cross-examination which has already been conducted. The scope of re-examination, in my view, is certainly not to undo the cross-examination done.

6. As far as the contention, of the witness having got confused owing to his advance age, is concerned, it is not as if the witness at the time of re- examination would be any younger. It will be open to the plaintiff to, at the CS(OS) 2258/2010 Page 2 of 5 stage of final arguments, refer to the said aspect and to also show law in support of the objection taken as to the mode in which the document was put by the cross-examining counsel to the witness.

7. As far as the judgments cited are concerned, while Rammi @ Rameshwar supra is a judgment permitting the Public Prosecutor to re- examine the witness in a trial in an offence of manslaughter, Tarun Khurana supra merely disposes of the petition under Article 227 of the Constitution of India impugning the order allowing re-examination, by affording to the petitioner therein the right of further cross-examination.

8. The parameters which apply to the testimony of a witness to a Will are entirely different. The settled principle of law in relation to the cross- examination of witnesses to a Will is that if more than one witness is to be examined, the examination and cross-examination of both should be on the same day with others being not allowed to be present when the earlier is being cross-examined. In this view of the matter, the plaintiff cannot be permitted re-examination of PW-3 as sought.

9. Though Section 138 supra permits re-examination to explain the matters referred to in cross-examination and permits further cross- examination of the witness thereafter, only if the Court has in re-examination permitted new matters to be introduced (else, after re-examination, there is no right of further cross-examination) but in my opinion, the words explain matters referred to in cross-examination cannot be interpreted so widely as to permit in routine, re-examination of witness and in the name of re- examination, undo what has been achieved/revealed in cross-examination. In my view, re-examination, particularly in civil cases, has to be permitted rarely. I say so because civil proceedings are essentially adversarial, as CS(OS) 2258/2010 Page 3 of 5 distinct from adjudication of criminality, which, with the passage of time, is more inquisitorial than adversarial, with the prosecution as well as the Judge being in search of

truth, rather than letting a finding on criminality being returned for failure and defaults of the accused.

10. I am also of the view that unless there is no objection to re-examination of the witness, re-examination sought even if only to explain matters referred to in cross-examination if disputed, the said dispute can be decided by the Court only. In such cases, re-examination can only be with permission of Court.

11. The words explanation of matters referred to in cross-examination in Section 138 supra, in my view, have to be interpreted as re-examination confined to explanation of the sense and meaning of the expressions used by the witness in cross-examination, if they be in themselves doubtful and also the motive by which the witness was induced to use those expressions. Re-examination, in my view, cannot go further than that. I reiterate that re-examination cannot be sought and allowed, with the sole object of giving a chance to the witness to undo the effect of statements earlier made in cross-examination. Lacunae in evidence led cannot be filled up under the pretext of re-examination.

12. Applying the aforesaid test to the evidence recorded of PW-3, I am of the view that no case for re-examination, is made out. I refrain from analysing the evidence at this stage.

13. It is however clarified that it will be open to the plaintiff to, at the stage of final arguments, raise all pleas which may be open to the plaintiff and no observation in this order, only declining the request for re-examination, shall have any bearing at the stage of final arguments or come CS(OS) 2258/2010 Page 4 of 5 in the way of the counsel for the plaintiff making his contentions qua the inconsistencies if any pointed out by the counsel for the opposite party.

14. The counsel for the plaintiff also states that the senior counsel for the opposite parties has been objecting to the witnesses of the plaintiff deposing further while tendering their affidavit by way of examination-in-chief in evidence, particularly qua the documents on the suit file sought to be proved by them.

15. The senior counsel for the defendants no.1&2 and the counsel for the defendant no.3 state that no such objection was ever raised and will not be raised qua other witnesses to be examined.

16. The parties to now contact the Court Commissioner appointed for recording evidence, for having remaining evidence recorded.

17. The Commission be executed within six months from today. RAJIV SAHAI  
ENDLAW, J JANUARY23 2018 pp/bs.. CS(OS) 2258/2010 Page 5 of 5

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**