

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

CR-1286-2015

Date of decision-04.12.2015

OMWATI

...Petitioner

VS

ANITA DEVI AND ORS

..Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. Parijat Gaur, Advocate
for respondent No.1.

Mr. Gopal Sharma, Advocate
for respondents No.2 and 3.

RAJ MOHAN SINGH, J (Oral)

[1] Petitioner seeks to assail order dated 11.02.2015 vide which application of the plaintiff-petitioner for additional evidence has been dismissed by the Civil Judge (Junior Division) Rewari. Plaintiff filed a suit for possession by way of specific performance on the basis of agreement to sell dated 25.05.2011 executed by defendant No.1 in favour of plaintiff in respect of 18 marlas of land for a total sale consideration of Rs. 1, 20, 000/-. An earnest amount to the tune of Rs.90,000/- was paid and target date for execution of sale deed was fixed as 25.06.2011. Plaintiff alleged that on the date fixed, he attended the office of Sub-Registrar and got his presence marked, but the defendant No.1 failed to fulfil her part of obligation, rather she sold

the land in question to respondents No.2 and 3 vide registered sale deed dated 25.07.2011. That is how respondents No.2 & 3 came to be impleaded as defendants in the suit.

[2] The suit was filed on 17.08.2011. Plaintiff alleged that when statement of Omkar @ Ombir was recorded as DW-3, at that time he disclosed to the plaintiff that he had already sold his share of land to defendant No.1 vide registered sale deed dated 25.02.2009. Thereafter, plaintiff verified the factum of aforesaid sale and moved an application for leading additional evidence at that stage. In the written statement filed by defendant No.1, she took the following stand:-

“That the contents of para No.1 are wrong and denied. It is also wrong that defendant No.1 is owner in possession of khasra No.204 (0-18). Defendant No.1 was having 1/4th share in khasra No.204 (0-18) and remaining 1/2 share, Omkar son of Lakhi, Parveen son of Kuldeep son of Lakhi having 1/8th share and remaining 1/8th share is in possession of Meena Devi D/o Kuldeep son of Lakhi. Answering defendant never owner in possession of the Khasra No.204 (0-18).”

[3] Apparently, in the stand taken by the defendant No.1, she alleged that Omkar is owner of half of the share besides other shares

owned by other persons. Learned counsel for the petitioner contends that in the plaint she has pleaded that defendant No.1 is absolute owner of the suit land. The additional evidence would be in consonance with the stand taken by the plaintiff in the plaint as well as in consonance with the alleged title passed over to defendants No.2 and 3, by virtue of sale deed dated 25.07.2011 which came to be registered subsequent to agreement to sell in question.

[4] It is a settled principle of law that if something remains obscure, the same can be filled in by way of additional evidence. Additional evidence if goes to the very roots of the case may be allowed at any stage of litigation. In the present case, the plaintiff/petitioner has specifically pleaded defendant No.1 to be absolute owner of the land in question. However, the said plea has been denied by the defendant No.1 in the written statement, but the additional evidence which is now sought to be adduced on record in the form of sale deed dated 25.02.2009 will go in a way to show that Omkar @ Ombir had already sold half of the share of the defendant No.1. Therefore, the pleadings in terms of plaint and the additional evidence so sought, prima facie appear to be in consonance with factual pleas of the parties including defendants No.2 and 3.

[5] In my view, the additional evidence at any stage would facilitate the Court in arriving at just and effective decision.

[6] In view of aforesaid, impugned order is set aside, This revision petition is allowed. Petitioner is entitled to lead additional evidence to the extent of adducing sale deed dated 25.02.2009 executed by Omkar @ Ombir in favour of defendant No.1 and prove his execution in accordance with law.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

(RAJ MOHAN SINGH)
JUDGE

December 04, 2015

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