

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

Civil Revision No.1891 of 2015 (O&M)
Date of decision: 18.03.2015

Raji and another

..... Petitioners

Versus

Om Parkash and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Harish Bhardwaj, Advocate for the petitioners.

RAJESH BINDAL, J

Prayer in the present petition is for setting aside the order dated 11.2.2015 passed by the learned court below vide which application filed by the petitioners-plainittfs for permission to lead additional evidence was dismissed.

It is a case, in which the petitioners filed a suit on 9.3.2011 for declaration with consequential relief of joint possession challenging the release deed 11.11.2010 executed by Chander in favour of his other sons on the ground that the petitioners/plaintiffs are widow and minor daughter of Bhanwar Singh son of Chander. The suit was dismissed, as no evidence was led by petitioner No.1 to prove her relationship and marriage with Bhanwar Singh (deceased), however, in appeal the matter was remanded back vide order dated 11.11.2014, as the learned lower appellate court found that findings had not been properly recorded on the issues framed. After remand of the case, the petitioners filed an application for permission to lead additional evidence on 9.1.2015. Prayer was made for producing identity card of petitioner No.1 and birth certificate of petitioner No.2 in support of plea that they are widow and minor daughter of late Bhanwar Singh son of Chander. The application was dismissed by the learned court below.

The contention of learned counsel for the petitioners is that the evidence sought to be produced is relevant for just decision of the case. Even if, there was a lapse on the part of the counsel in not leading evidence at the appropriate stage, party should not be made to suffer on that account.

The petitioners have been deprived of their right in the property owned by the late husband of petitioner No.1 and the father of petitioner No.2. Even lacuna in the evidence can also be permitted to be filled in.

After hearing learned counsel for the petitioners, I do not find any merit in the present petition.

The only case set up in the suit filed by the petitioners/plaintiffs was that they are entitled to share in the property being widow and minor daughter of late Bhanwar Singh son of Chander. However, no evidence was led in support of that plea. Even before the first appellate court, no prayer was made to permit the petitioners to lead additional evidence. It is only after the case was remanded back by the learned lower appellate court, as findings had not been recorded on issues properly that the application for permission to lead additional evidence was filed. It cannot possibly be opined that evidence sought to be produced was not in knowledge of the petitioners when they were leading evidence. Arguments on the issue that on account of lapse of counsel, party should not be made to suffer, cannot be accepted in all cases, as it is the choice of the party to engage a particular counsel. Permitting the petitioners to lead additional evidence now, when even the basic facts are missing in the plaint, would amount to re-trial of the case, which cannot be permitted.

The petition is accordingly, dismissed.

(RAJESH BINDAL)
JUDGE

18.03.2015

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