

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

**CR No.299 of 2015 (O&M)
Date of decision: 21.10.2015**

Smt. Asha Rani and others

... Petitioners

Vs.

Smt. Saroj Kumari and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ashok Arora, Advocate
for the petitioners.

Dr. Parveen Hans, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 05.01.2015, (Annexure P-4), whereby, the application dated 29.11.2014 (Annexure P-2) has been dismissed by the trial Court on the ground that it had been moved when the case was listed at the plaintiffs' evidence. As already 10 effective opportunities to conclude the evidence had been availed and the similar application was decided on 11.04.2014.

Mr. Ashok Arora, learned counsel appearing on behalf of the petitioners submits that plaintiffs had sought declaration that they

are owners in possession of 1/3rd share in equal shares of a residential house bearing M.C. Property No.299/4, situated in Gali Multani Chowk, Mohalla Rampura, Hansi (Hisar), as well as, to order dated 25.04.2000 passed by the Executive Officer, M.C., Hansi, vide which, defendant No.1 Smt. Saroj Kumari has been shown as owner in possession of the house in dispute as null and void, much less, setting aside of the sale deed dated 28.12.2007 registered on 31.12.2007 in favour of defendants No.3 and 4.

In order to prove the averments made in the plaint, vis-a-vis, submission of the affidavit and application purported to have been submitted by Saroj Kumari to M.C.Hansi, the petitioner-plaintiffs moved an application for summoning of the witnesses from Municipal Council, Hansi and the said application was allowed on 11.04.2014 Pawan Kumar, M.C., Hansi appeared as PW7 and submitted that file pertaining to the transfer of the house in question had been taken by the concerned police which had further sent it for comparison of the signatures to the FSL, Madhuban. Having left with no other option, another application to summon the officers of FSL and ASI and clerk MC, was moved again. Bhuvnesh Kumar, Clerk of Municipal Council, Hansi appeared as PW10 and submitted that affidavit and application were not available on the file which resulted into moving of another application to summon the criminal Ahlmad. Both the applications were allowed on 11.04.2014 (Annexure R-1). The trial Court vide order dated 15.11.2014, (Annexure P-5) did not permit the petitioners

to prove the aforementioned documents on the premise that witnesses of the Municipal Committee were not signatory of the affidavit/application.

Accordingly, the application (Annexure P-2) was moved to summon the witnesses, i.e., Notary Public, who had attested the affidavit and an Ex-employee of the M.C.Hansi, who received the application, much less, affidavit filed by Saroj Kumari. The said application has been dismissed by the trial Court vide impugned order dated 05.01.2015.

Dr. Parveen Hans, learned counsel appearing on behalf of the respondents submits that application for summoning of the witnesses cannot be entertained by the trial Court, much less, not maintainable. Once two previous applications had been allowed, nothing prevented the petitioners to summon the aforementioned witnesses as they were in knowledge of this fact. Even otherwise by summoning witnesses of Municipal Committee, exhibition of the documents could not have been proved, thus, prays that impugned order is just, legal and there is no illegality, much less, perversity in the impugned order.

I have heard learned counsel for the parties and appraised the paper book.

Noticing the aforementioned rival contentions of learned counsel for the parties to the lis, it would be apt to reproduce the operative part of the order dated 15.11.2014:-

“Arguments heard on the point whether alleged affidavit of Saroj Devi can be exhibited in the evidence of PW Bhuvnesh or not. From the perusal of the examination in chief of PW10 Bhuvnesh, it is evident that alleged affidavit of Saroj Devi is not admitted by PW10 in his examination in chief and he deposed in his evidence that affidavit of Saroj Devi is not part of the file. He did not depose anything about the affidavit whether it was given in his presence or not. From the perusal of the alleged affidavit it is evident that PW Bhuvnesh is neither signatory of the affidavit nor was it attested by him. When any witness is denying any document then it cannot be exhibited in his evidence even though it is original document. Hence, request of the counsel for the plaintiff for exhibiting the alleged document in the evidence of PW Bhuvnesh is declined. However, it is made clear that if the plaintiff desired, she can prove this document as per statutory provisions. Therefore, bound down PW Bhuvnesh and Retired ASI Suresh Kumar is examined. No other witness of the plaintiff is present. Summoned file is returned to Ahlmad Paramjeet. His statement is also recorded to that effect. Now to come up on 29.11.2014 for remaining evidence of the plaintiff.”

The petitioner-plaintiffs had been callous in not summoning the aforementioned witnesses to prove the execution of the affidavit and receipt of the application purported to have been submitted by Saroj Devi. For the purpose of advancing justice to the parties to the lis, I am of the view that the trial Court ought not to have declined the application, inasmuch as that, the suit was listed for plaintiffs' evidence. In essence, remedy left to the petitioner-plaintiffs was to summon the aforementioned witnesses.

I am of the view that the order dated 05.01.2015 closing the evidence of the petitioner-plaintiffs and as well as dismissing the application, is erroneous and accordingly the same is hereby set aside. Petitioner/plaintiffs are permitted to examine the aforementioned witnesses in accordance with law by seeking assistance/through the process of the Court.

It is made clear that in case the petitioner/plaintiffs adopt any dilatory tactics in leading evidence, the trial Court can always consider in passing an appropriate order as per provisions of Code of Civil Procedure.

Accordingly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

October 21, 2015
savita