

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 4090 of 2015 (O&M)
Date of decision: 3.7.2015

Mohinder Singh

.. Petitioner

v.

Jagir Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gagandeep Singh Sirphikhi, Advocate for the petitioner.

...

Rajesh Bindal J.

The plaintiff has filed the present petition impugning the order dated 20.5.2015, passed by the learned court below, vide which the application filed by him for confronting the contents of a CD showing possession of the suit property of the petitioner-plaintiff, in cross-examination of the defendants-respondents, was declined.

In the case in hand, the petitioner filed a suit for declaration claiming that he is owner in possession of Haveli, described in the suit. Further, relief of permanent injunction was prayed restraining the respondents-defendants from interfering in possession of the petitioner-plaintiff. Prayer for mandatory injunction was also made for restoring possession of the Haveli to the petitioner. It is in the aforesaid suit that a CD was sought to be confronted by the petitioner to the defendants in their cross-examination with a view to establish his possession. The same having been declined by the court below, the order has been impugned in the present petition.

Learned counsel for the petitioner, while referring to the judgment of Bombay High Court in Mrs. Havovi Kersi Sethna v. Kersi Gustad Sethna, 2011(3) Civil Court Cases 356, submitted that CD is a kind of documentary evidence. As the same throws clear light on the actual physical possession of the property in dispute, it was sought to be confronted to the respondents in their cross-examination. However, the learned court below has wrongly declined the same. If the contents of CD were perused and confronted to the respondents, that would have clinched the issue.

After hearing learned counsel for the petitioner, I do not find any reason to interfere in the present petition. Though the issues have not been produced, however, still as the suit was filed by the petitioner for declaration claiming ownership and possession over the suit property, the onus thereof must be on him. The suit was filed on 22.7.2009. In evidence already led by the petitioner-plaintiff, he must have produced evidence in support of his claim. The CD, which is sought to be produced now to show possession of the property in dispute, if considered relevant, should have first been produced by the petitioner in his evidence. It should have been mentioned in the list of documents to be produced, on which reliance is sought to be placed. The copies of the documents relied upon are also required to be annexed with the plaint at the time of filing of the suit or at the stage of framing of issues. Subsequent thereto, no document can be produced without permission of the court.

The contention that had this document been produced with the plaint, the stand of the petitioner would have been disclosed to the respondents-defendants is merely to be noticed and rejected, as the same runs totally contrary to the scheme of Code of Civil Procedure. The CD sought to be produced at later stage cannot be said to be a kind of document, which could be confronted to the respondents-defendants in their cross-examination only. The judgment of Bombay High Court in Mrs. Havovi Kersi Sethna's case (supra) is distinguishable as in that case, the CD and handwritten diary sought to be confronted to the defendant in cross-examination, in fact, contained the handwriting and conversation of the

respondent therein.

For the reasons mentioned above, I do not find any merit in the present petition. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

3.7.2015
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