

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6127 of 2012 (O&M)
Date of decision: 30.04.2015

Jaswant Rai and another

... Petitioners

versus

Vijay Kumar and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kulbhushan Raheja, Advocate for the petitioners.

Mr. Ashok Singla, Advocate for the respondents.

K.Kannan, J.

The plaintiffs, who filed a suit for permanent injunction referring the property as a property allotted in a family partition, after conclusion of the evidence, brought a document mentioning it as an agreement but referred in the agreement as a sale deed dated 20.07.2014, as additional evidence. The respondents were contending that there was no reference at all to this document anywhere in the plaint and they were bringing a surprise in the trial nearly after four years of institution of the suit. The counsel states that this document is merely a matter of evidence need which not be pleaded and cites before me a judgment of this Court in Hans Raj Vs. Surinder Kaur and others, 2010 (2) CCC 377, to state that merely because there is some delay that will not be sufficient to reject the application for additional evidence.

I will not hold the delay as cause for rejection but I find no use for referring to the judgment as a proposition of law to be applied to this case. In another judgment in Banwari Vs. Nagina 1999 (1) PLJ 610, the Court was holding the exercise of due diligence must be given wider and meaningful connotation and mere negligence of a party ought not to have effect of rejecting the application for reception of additional evidence. In a suit for injunction where the plaintiff is

required to prove his possession and absence of interest for a respondent to cause any invasion to the plaintiff's asserted right that needs to be appropriately proved on how the plaintiff bases his claim. If the plaintiff were to contend that the defendant had agreed to allow the plaintiff the peaceful possession, there must be a reference to such document in the pleading. If there is no such reference to a family partition as basis for the claim, the defendant is entitled to urge that no evidence would be given on a matter which was not pleaded. In this case, the counsel for the respondents points out that the witnesses were examined and to none of them even a suggestion was made about any right as having been given up by the defendants in the presence of the witnesses. The production of the document was surely not possible at the belated time because he was trying to bring a case which was not in consonance with his pleadings. The dismissal of the petition before the Court was justified and I direct the trial Court to conclude the evidence and proceed to dispose of the case by rendering a judgment within 8 weeks from the date of receipt of this order and report to this Court.

The civil revision petition is dismissed with above observations.

(K.KANNAN)
JUDGE

30.04.2015
prem/kv