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

Civil Revision No.7098 of 2011 (O&M)

Date of Decision: 04.12.2015

SAROJ KANTA

.....Petitioners

Vs

JAGBIR SINGH ETC.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Karan Singh, Advocate
for the petitioner.

Mr. Ashish Gupta, Advocate
for respondents.

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

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed order dated 27.09.2011 passed by Additional District Judge, Rohtak vide which application filed by the petitioner under Order 41 Rule 27 CPC for permission to lead additional evidence was declined.

[2]. Petitioner Smt. Saroj Kanta is a subsequent vendee of part of the suit land which was subject matter of civil suit between Jagbir Singh and Chatar Singh for specific performance of agreement to sell dated 03.07.1998. Admittedly

Jagbir Singh filed an application under Order 1 Rule 10 CPC for impleading the petitioner as party/defendant No.2 in the suit. However the said application was dismissed by the trial Court on 28.07.2008. Even thereafter the trial Court passed the decree against the plaintiff-Smt. Saroj Kanta and the sale deed dated 05.03.2007 executed by the Chatar Singh in favour of the petitioner was set aside.

[3]. Petitioner filed appeal before the lower Appellate Court against the judgment and decree dated 22.10.2008. In the said appeal an application under Order 41 Rule 27 CPC was also filed seeking to adduce additional evidence in the form of *farad jamabandi* for the year 1999-2000 of *Khewat* No.7, *Khatoni* Nos.18, 19 of village Bhaini Chanderpal, mutation No.1777, 1778, 1828 and 1822.

[4]. The aforesaid documents were claimed to be essential documents for just decision of the case. The lower Appellate Court vide order dated 27.09.2011 dismissed the prayer for additional evidence on the ground that sufficient evidence has already been led and it was observed that the petitioner had ample opportunity to lead evidence before the trial Court. The application was dismissed. That is how the present revision petitioner came to be filed before this Court.

[5]. At the time of motion hearing, following order was

passed on 01.12.2011:-

“Petitioner-Smt. Saroj Kanta is the subsequent purchaser of the suit land, subject matter of Civil suit no.551/1991 titled as Jagbir Singh v. Chatar Singh for specific performance of the agreement to sell dated 3.7.1998.

It is averred that the application preferred by the plaintiff-Jagbir Singh under Order 1 Rule 10 CPC for impleading the petitioner-Smt. Saroj Kanta as defendant no.2 was dismissed vide order dated 28.7.2008(P7) and even then the learned Additional Civil Judge (Senior Division) Meham has illegally shown the petitioner Smt. Saroj Kanta as defendant and passed a decree against her whereby the registered sale deed dated 5.3.2007 in respect of suit property has been set aside. It is further contended that in the appeal filed by the petitioner against the judgment and decree dated 22.10.2008 (P13), an application under Order 47 Rule 27 CPC has been preferred to show that in the subsequent jamabandi for the year 1999-2000 the share of the original owner-vendor Chatar Singh was much more so as to take care of both the plaintiff Jagbir Singh as well as the petitioner-Smt. Saroj Kanta. It is further contended that the application for additional evidence in the facts of the case which goes to the root of the matter has been illegally dismissed.

Notice of motion for 24.1.2012.

Sessions Judge, Rohtak is directed to submit a

report in respect of the averment that a decree has been passed against the petitioner-Smt. Saroj Kanta despite the fact that she was not a party to the suit.”

[6]. Pursuant to aforesaid order District and Sessions Judge, Rohtak has submitted a report dated 09.01.2012 in the context of the averment of passing of decree against the petitioner despite the fact that she was not party to the suit. The detailed report has explanatory note in the context of proceedings undertaken by the trial Court at different stages.

[7]. Having considered the aforesaid report as well as the nature of prayer made in the revision petition, this Court is of considered opinion that lower Appellate Court has gone wrong in dismissing the application under Order 41 Rule 27 CPC merely on the premise that the petitioner had ample opportunity before the trial Court and she could have led evidence accordingly.

[8]. Apparently, petitioner had no occasion to lead evidence before the trial Court because she was not party to the litigation. Since decree has been passed against her and appearance of her name in the array of defendants has been elaborately explained in the report of District and Sessions Judge, Rohtak, therefore in all fitness of things, it would be appropriate to allow the petitioner to take recourse of additional evidence at

appellate stage.

[9]. Learned counsel for the petitioner has submitted that in application so filed under Order 41 Rule 27 CPC, production of agreement to sell between Chatar Singh and the petitioner has been inadvertently left and she seek to file the same as additional evidence along with other documents which are subject matter of application dated 22.01.2011.

[10]. It is a settled principle of law that if something remains obscure can be filled by way of additional evidence. Since the petitioner has been made to suffer the effect of decree passed by the Courts below without her being party to the litigation, therefore, the plaintiff has a right to lead evidence by way of additional evidence for which her claim cannot be denied on any technical grounds.

[11]. The petitioner would be at liberty to move appropriate application before the lower Appellate Court in addition to the application already on record seeking to bring agreement to sell executed between Chatar Singh and the petitioner on record by way of additional evidence. In such eventuality, lower Appellate Court would be obligated to decide the claim of the petitioner on merits.

[12]. In view of aforesaid, this revision petition is allowed. Impugned order dated 27.09.2011 is set aside. The lower

Appellate Court shall proceed to take additional evidence in the manner as suggested above.

December 04, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE