

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7663 of 2015(O&M)
Date of Decision: November 18, 2015

Anita Rani

..... Petitioner

Versus

Bharat Bhushan

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ravish Bansal, Advocate
for the petitioner.

Amit Rawal, J (Oral)

Learned counsel for the petitioner submits that in a suit for specific performance of agreement to sell dated 22.8.2008, on 14.8.2015 an additional issue was framed. Since the case was already at the stage of rebuttal and arguments, an application dated 11.9.2015 (Annexure P-4) was moved to seek an opportunity to lead evidence, onus of the additional issue rested upon the petitioner-plaintiff. The petitioner-plaintiff tendered the documents i.e. certified copy of enquiry report conducted by Patwari through his testimony but its mode of proof was objected to, as the original had not been summoned. Accordingly, the same was marked as Mark 'Z'. Thereafter evidence was closed on 19.9.2015.

He further submits that during the interregnum the petitioner-plaintiff also obtained certified copy of the civil suit bearing No.325 dated 8.4.1994 titled as Parveen Kumar etc.Vs. Punjab

Mandikaran Board etc. which was a suit for permanent injunction against the Punjab Mandikaran Board. In the said suit, the trial court rendered a judgment and decree dated 12.8.1997 where the property has been described only by khasra numbers not by boundaries. It is the said piece of evidence which is sought to be brought on record. The additional issue No.4-A was framed as to whether the defendant-vendor had valid title or not for the reason in the agreement to sell the property has been described by boundaries only. The judgment also reflects khasra numbers and therefore, even if the petitioner-plaintiff is not a party, the suit property is the same, therefore, it is essential and necessary for placing on record such evidence.

He further submits that the trial court negated the plea on the premise that petitioner-plaintiff has not been able to explain the reasons as to how and why the aforementioned judgment and decree is relevant for adjudication of the *lis* between the parties.

He further submits that after allowing of the application (Annexure P-4) only one week's time was given to the petitioner-plaintiff to lead evidence which was too short to plead it.

I am in agreement with the aforementioned submissions of the learned counsel for the petitioner-plaintiff as the aforementioned facts are borne out from the perusal of the paper book. However, it is a matter of record that the suit is of the year 2012 and in order to advance justice between the parties to the *lis*, so that there is no miscarriage of justice, the impugned order is set aside. The petitioner-plaintiff is granted one opportunity to lead

evidence and prove the documents i.e. certified copy of statement of PW-1 Prem Nath, certified copy of statement of PW-2 Mohan Lal, Certified copy of statement of PW-3 Chaman Lal, Certified copy of statement of PW-4 Gurmail Singh, Certified copy of statement of PW-5 Naresh Kumar, certified copy of plaint, certified copy of judgment and decree and certified copy of site plan Ex.P-1 in accordance with law subject to payment of costs of ₹10,000/- if need be through process of court.

It is made clear that the payment of costs would be condition precedent before availing the opportunity to lead evidence.

The trial court shall grant an opportunity to the respondent-defendant also to cross-examine the aforementioned witnesses, in essence, rebut the aforementioned evidence. The petitioner may take assistance of the trial court to summon the official witnesses.

In my view, the aforementioned evidence is essential and necessary for adjudication of the suit as the plaintiff has categorically pleaded that defendant No.1-Bharat Bhushan had a defective title.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 18, 2015
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