

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7795 of 2013

Date of decision: 26.11.2015

Vandana Kapoor and another

... Petitioners

Versus

Sonam Nagrath and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vishal Aggarwal, Advocate for the petitioners.
Mr. Sanjay Vij, Advocate for the 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?

ARUN PALLI J. (Oral)

Vide order being assailed dated 06.12.2013, rendered by Additional Civil Judge (Sr. Divn.), Gurgaon, application moved by the petitioners-defendants, under Section 45 of Indian Evidence Act, 1872, seeking permission to examine handwriting expert, had since been dismissed. The conclusion arrived at by the trial court reads as thus:

“5. Admittedly, the respondents had filed the present suit on 27.10.2003, after disposal of interim applications, issues in this case were framed on 15.06.2007 and in support of their respective claims, both the parties have already led evidence and case was fixed for rebuttal evidence. At this belated stage, the applicant/defendants have moved the present application, which is nothing but an attempt to lead additional evidence

though nothing has been disclosed by applicant/defendant that what estopped them from leading the same at an earlier occasion. Our Hon'ble High Court in Satnam Singh Vs. Devinder Kaur, 2006(4) RCR (Civil) 639, has held that after amendment of CPC, it is only discretion under inherent power of the court to permit or not, to lead additional evidence. It was further held that applicant must explain as to why such evidence was not led earlier which was within his knowledge. In another case titled as Smt. Malkiat Kaur v. Mohinder Singh, 2012(1) PLR 129, our Hon'ble High Court, while dealing with an application for additional evidence held that once trial Court comes to a conclusion that such an application has been filed when the suit had matured for disposal, with an intention to delay the proceedings, no opportunity can be granted for filling up lacuna in the evidence. In Gurmukh Singh v. Sarwan Singh (P&H) 2012(6) R.C.R. (Civil) 2656, our Hon'ble High Court, dealt with a case regarding additional evidence, where the petitioner knew about his case from the very beginning, held that it was for him and the other defendants to prove their case by producing the revenue record, which he failed to produce and now by way of additional evidence he cannot be allowed to fill up the lacuna in his case. Hence, following the judicial precedents discussed above, it is clear that applicants/defendants have failed to make out any case allowing them to lead additional evidence and it appears that purpose of present application is just to delay the disposal of present case."

In a suit filed by the respondents-plaintiffs, they prayed for a decree for mandatory injunction as also perpetual injunction directing the defendants not to use the property of the plaintiffs bearing house No.968, Sector 14, Mehrauli Road, Gurgaon (Haryana) and to vacate the same forthwith and also to pay arrears of licence fee.

In defence, petitioners had set up an agreement to sell dated 27.10.1999, purportedly executed by late Sh. S.K. Nagrath in favour of petitioner No.1 qua the suit property. Issue No.9 as regards the execution of the said agreement was framed on 15.06.2007. Concededly, respondents-plaintiffs have already led and closed their evidence and had examined an expert to prove that the agreement being propounded by the defendants was never executed by late Sh. S.K. Nagrath and it does not bear his signatures. So much so, even the petitioners-defendants closed their evidence, after availing 25 opportunities, on 09.03.2011. It was only when the matter was listed for rebuttal and arguments the petitioners moved an application, after two years of closing their evidence, to examine handwriting expert. Ex facie, petitioners were fully conscious of their defence and also that to prove the execution of the agreement they were required to lead cogent and appropriate evidence. Particularly, when respondents-plaintiffs examined an expert. Thus, it is not a case where the evidence that is sought to be led was either not in the notice/knowledge

of the petitioners or could not be led despite the exercise of due diligence. In fact, what is sought to be adduced by the petitioners is nothing but an additional evidence. Therefore, there hardly exists any ground to interfere with the order being assailed. Faced with this, learned counsel for the petitioners submits that another suit filed by petitioner No.1 i.e. Vandana Kapoor, seeking specific performance of the agreement to sell dated 27.10.1999 is pending inter se the parties, before the same court. And evidence of petitioner No.1 is being recorded. It is submitted that let both the suits i.e. Civil Suit No.449/03/2011, pending in the court of Sh. Rajesh Sharma, Additional Civil Judge (Sr. Divn.), Gurgaon (Haryana) and Civil Suit No.13237 of 2013, be heard together and the trial court be directed to decide both the suits within a specified time. And petitioners shall not move any fresh application in suit No.449/03/2011 and, would rather, assist the court to decide the matter expeditiously.

Learned counsel for the respondents does not oppose the prayer that has been advanced by learned counsel for the petitioners and rather expressed his agreement to the suggested course.

That being so, the revision petition is disposed of with a direction to the trial court to decide both the suits, as indicated above, together, within a period of six months from the receipt of certified copy of this order. Needless to assert,

trial court shall formulate the requisite time schedule, as would be necessary, to ensure that both the suits are decided within the stipulated period.

November 26, 2015
Rajan

(Arun Palli)
Judge