

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.852 of 2014

Date of decision: 08.12.2015

Asan Dera Baba and another

.....Petitioners

versus

Binder and others

.....Respondents

**CORAM: Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Saurabh Bajaj, Advocate for the petitioners  
Mr.Sanjiv Gupta, Advocate for respondent Nos.1 to 7

- 1. Whether Reporters of Local Newspapers 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?*

**Kuldip Singh, J. (Oral)**

Impugned in the present revision is the order dated 9.1.2014, passed by the learned Additional District Judge, Kurukshetra, vide which, in an appeal filed by the present petitioners, an application under Order 41 Rule 27 CPC to produce the following documents was dismissed:-

- i) Jamabandi for the year 1905-06*
- ii) Mutation No.89 dated 13.9.1934*
- iii)Jamabandi for the year 1941-42*
- iv)Mutation No.122 dated 24.5.1947*
- v) Mutation No.129 dated 10.5.1946 (which was cancelled)*
- vi)Mutation No.132 dated 5.1.1951*

*vii)Mutation No.152 dated 20.6.1956*

*viii)Jamabandi for the year 1953-54*

*ix)Jamabandi for the year 1955-56*

*x) Mutation No.150 dated 17.6.1955*

*xi)Sale deed dated 20.2.1951 executed by Mangal Nath  
in favour of Ganga Ram*

It was held by the learned Additional District Judge that aforesaid documents were within the knowledge of the applicant at the stage of leading evidence and should have been produced at the appropriate stage.

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out that the disputed property is stated to be religious property and is alleged to have been sold by one Mangal Nath. The lower Court dismissed the suit on the ground that the identity of the land is not established to the effect that it is a religious property. The same could not be connected with suit land from the revenue record. By way of the present application, the plaintiff wants to produce the said Jamabandis and mutations and one sale deed to show that it is religious property of the Dera.

Learned counsel for the revisionists has argued that in this case the documents were in Urdu, therefore, he could not lay hand on these documents as the Urdu reading people are not easily available. Therefore, these documents escaped notice of the plaintiffs – petitioners.

The contention has been controverted by learned counsel

for the respondents on the ground that some of the documents in Urdu were produced before the lower Court and even translation of those documents was produced. Learned counsel for the respondents has also produced authority of the Hon'ble Supreme Court in Lekhraj Bansal v. State of Rajasthan and another, 2014 (104) ALR 756, wherein it was observed as under:-

*“The parties to an appeal shall not be entitled to produce additional evidence in the appellate Court unless the conditions stipulated under Order 41 Rule 27 Code of Civil Procedure are satisfied. It is not the case of the Appellant that the trial Court had refused to admit the said evidence which ought to have been admitted. It is also not the case of the Appellant that the said evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him during pendency of the suit before the trial court. On the other hand it is vehemently contended that the said evidence namely the document was filed but was omitted to be tendered in evidence and got exhibited in the suit. The lower appellate court elaborately considered the factual matrix and held that the Appellant has not satisfied any of the conditions stipulated under Order 41 Rule 27 and hence is not entitled to produce additional evidence. In our view the said finding has rightly been confirmed by the High Court.”*

Order 41 Rule 27 CPC provides as under:-

***“27 . Production of additional evidence in Appellate***

***Court— (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or***

***documentary, in the Appellate Court, But if—***

***(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or***

***(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or***

***(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.***

***(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”***

The perusal of the aforesaid provision shows that additional evidence can be allowed on three grounds. Admittedly, the first ground is not available since the lower Court did not refuse to admit the documents in evidence. The second ground is disputed by the respondents saying that with due diligence, these documents

could be available. However, the third ground is an extra ordinary one, wherein the additional evidence can be allowed where the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce the judgment or for any other substantial cause. Word 'any other substantial cause' has a wide meaning.

In the present case, the disputed property is stated to be religious property belonging to Dera and its alienation is in dispute. Therefore, even if there is some negligence on the part of the functionaries of the Dera in producing the some evidence but keeping in view nature of the property, the provisions of Order 41 Rule 27 CPC are not be strictly construed or enforced. In fact, the interest of the justice requires that it should be finally decided whether the property is religious property and belongs to Dera or not?

In these circumstances, the production of revenue record is must to determine the nature of the property.

Learned counsel for the petitioners has stated that he does not press the application qua the sale deed. The copies of the mutations and jamabandis are per se admissible.

In view of the matter, I am of the view that the interest of justice requires that the nature of the property must be determined. Therefore, the copies of jamabandis and mutations are required for effectively deciding the controversy. As such, the impugned order is set aside. The application to produce the revenue record mentioned in the application is allowed, except the sale deed for which the

application is not pressed. The petitioners can tender these documents along with its translation but will not be able to examine any witness. Respondents shall then be given opportunity to rebut these documents. Plaintiffs are also burdened with costs of Rs.20,000/-, to be paid to the opposite party.

The revision is accordingly allowed.

**08.12.2015**

*gk*

**(Kuldip Singh)  
Judge**