

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

**Civil Revision No.1259 of 2015 (O&M)
Date of Decision: 23.08.2016**

Ranjit Kaur and others

.....Petitioners

Vs

Supinder Kaur and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jag Nahar Singh, Advocate
for the petitioners.

Mr. Ramesh Sharma, Advocate
for respondent Nos.1 and 2.

RAJ MOHAN SINGH, J

[1]. Petitioners have assailed order dated 11.02.2015 (Annexure P-5) passed by Civil Judge (Jr. Divn.) Malout, whereby application for leading additional evidence was allowed.

[2]. Plaintiff/respondent Nos.1 and 2 filed a suit for declaration to the effect that they were owners in possession of land measuring 1 Kanal 5 Marlas in the village Killianwali on which a house was constructed and land measuring 95 Kanals in village Lohara. Mutation Nos.1280 dated 29.12.2011 and 2570 dated 30.12.2011 were also claimed to be illegal, null and

void. Permanent injunction was also sought restraining the defendant/petitioners from alienating the suit property and also restraining them from withdrawing any amount from the account of deceased Jag Singh which was lying deposited in the form of FDRs and in the lockers. Plaintiff/respondents claimed that Jag Singh was the father-in-law of plaintiff/respondent No.1, and grandfather of plaintiff/respondent No.2 and father of respondent No.3 and husband of plaintiff/respondent No.4. Jag Singh died on 06.12.2011. He executed a registered Will dated 06.05.2002 in favour of plaintiff/respondent Nos.1 and 2. Darshan Singh was alleged to be man of many vices. He was married with Rupinder Kaur earlier. There was no issue born out of that wedlock and both got divorced. Darshan Singh was again married to respondent No.1. Respondent No.2 took birth from this wedlock. Jag Singh was having love and affection for plaintiff/respondent Nos.1 and 2 and he executed the Will.

[3]. Defendant/petitioners contested the suit on many counts and raised counter claim that they were owners in possession of the property on the basis of natural succession being daughters and widow of late Jag Singh. They claimed equal shares with respondent No.3 in the land measuring 96 *Kanals* in village Lohgarh. They also pleaded that Jag Singh was very affectionate towards his daughters and widow. He was

suffering from heart disease. The claim of the plaintiff/respondent Nos.1 and 2 was controverted by way of written statement and by raising counter claim.

[4]. During pendency of the suit, an application for amendment of the plaint was moved in which the land situated in village Lohgarh Tehsil Dabwali, District Sirsa was also incorporated which was claimed in the counter-claim. The said application was allowed by the trial Court and thereafter amended plaint was filed. Issue No.3 was in respect of Will dated 06.05.2002, whether the said Will was legal and valid? Onus was fastened upon the plaintiffs to prove that the Will was legal and valid document.

[5]. Both the parties led evidence. Evidence of the plaintiffs was closed. After closure of evidence of both the parties, plaintiff/respondent Nos.1 and 2 filed an application dated 09.10.2014 for summoning some witnesses in rebuttal, which was allowed. The said application carried the endorsement made by the trial Court in respect of assessment towards diet money etc. to the tune of Rs.1600/-. The application was opposed by the defendant/petitioners. Vide order dated 10.12.2014, Civil Judge (Jr. Divn.) Malout dismissed the above said application by observing that earlier it was allowed in

routine without perusal of the record, but thereafter from perusal of the record, it transpired that the witnesses which were sought to be summoned by the plaintiffs in rebuttal were required to be examined in affirmative. On the said premise, it was ordered that the plaintiffs were not entitled to summon any such witnesses to lead evidence in rebuttal. The application was accordingly dismissed. The amount so assessed was ordered to be refunded to the plaintiffs.

[6]. After dismissal of the aforesaid application, plaintiff/respondent Nos.1 and 2 filed another application for additional evidence under Section 151 CPC to summon nine witnesses on the ground that the defendants misled the plaintiff/respondent Nos.1 and 2 by way of counter-claim and by way of leading the evidence on the issues the onus of which was upon them. They withdrew the counter-claim at the fag end and, therefore, it was necessary for the plaintiff/respondent Nos.1 and 2 to prove their cordial relations with Jag Singh. The said application was opposed by the defendant/petitioners. The Civil Judge (Jr. Divn.) Malout vide order dated 11.02.2015 allowed the application for additional evidence with a direction to conclude the same in two effective opportunities, failing which the plaintiffs' evidence shall be deemed to be closed by order of the Court.

[7]. Trial Court accepted the application for additional evidence despite dismissal of application for leading evidence in rebuttal. Additional evidence was sought to be led on the premise that the defendant/petitioners were required to lead their evidence in counter-claim and plaintiff/respondent Nos.1 and 2 were under this impression that they would have opportunity to lead evidence in rebuttal to the counter-claim. They could not lead evidence at the time of plaintiffs' evidence. Since the counter-claim was withdrawn by the defendants when the plaintiff/respondent Nos.1 and 2 filed application for rebuttal evidence. Though the evidence which was sought to the adduced by way of additional evidence was in the knowledge of the plaintiff/respondent Nos.1 and 2 at the time of leading evidence in affirmative, but the counter-claim filed by the defendant/petitioners sufficiently prevented them from leading such evidence in affirmative under the impression that they would get proper opportunity to rebut the counter-claim of the defendant/petitioners.

[8]. There is a mark distinction between rebuttal evidence and the additional evidence. Additional evidence can be allowed in respect of a fact which was not within the knowledge of the party inspite of due diligence. Whereas evidence in rebuttal is in respect of issue which was already within the knowledge of the

party and the party had reserved its right of rebuttal in that regard. Trial Court granted indulgence in favour of the plaintiff/respondent Nos.1 and 2 on the ground that the additional evidence would enable the court effectively in resolving the dispute between the parties in a just and proper manner. The application for leading additional evidence was allowed subject to payment of costs of Rs.2,000/- to be paid to the defendant/petitioners.

[9]. I have seen the nature of additional evidence sought by the plaintiffs to be led. Only a fact in respect of cordial relations between plaintiffs and Jag Singh can be made subject matter of additional evidence, otherwise all the witnesses sought to be produced in additional evidence were also sought to be produced in rebuttal evidence for which prayer was declined by the Civil Judge (Jr. Divn.) Malout on 10.12.2014. Witness Nos.1 to 5, 7 and 8 could not show during course of arguments as to how they will satisfy the test of leading additional evidence despite dismissal of such prayer in the rebuttal evidence on 10.12.2014. From the arguments, it was gathered that witness Nos.6 and 9 would suffice to meet out the requirement of additional evidence after dismissal of prayer for leading evidence in rebuttal, otherwise the witness Nos.1 to 5, 7 and 8 were required to be examined in affirmative evidence.

[10]. The cordial relations of plaintiffs and Jag Singh can be led with the help of Record Keeper from Judicial Record Room, New Court Complex, Mandi Dabwali along with complete file of case titled as State vs. Jagga Singh, bearing FIR No.34 dated 25.01.2006 under Sections 279/337/338/427 IPC and witness No.6 would suffice to satisfy the aforesaid requirement. Similarly Record Keeper from Sessions Record Room along with Sessions case No.67-A of 26.08.2002, FTC No.77 of 20.08.2004 decided on 10.11.2004 containing personal bond of Supinder Kaur plaintiff and surety bond executed by Jag Singh in FIR No.45 dated 31.03.2002 and *Jamabandi* of Jag Singh would suffice to serve the requirement as projected by the plaintiff/respondents No.1 and 2 to prove their cordial relations with Jag Singh. So far as the other witnesses are concerned in considered opinion of this Court, the evidence which is sought to be led by means of additional evidence would be an evidence which was required to be led in affirmative only.

[11]. In view of aforesaid, I found that only witness Nos.6 and 9 can be permitted to be examined in additional evidence, at this stage as the Court would become *functus officio* only after pronouncement of judgment. It is a settled principle of law that, if something remains obscure, that can be permitted to be filled in by way of additional evidence, if the Court considers that the

evidence sought to be led as additional evidence would definitely go in a long way to enable the Court to decide the case in a just and effective manner.

[12]. In my considered view, since the case was rested on validity of Will, therefore, cordial relations between plaintiffs and Jag Singh was one of the key factor which would throw light on the entitlement of either party to the *lis*. Therefore, such evidence can be permitted to be led by way of additional evidence at this juncture.

[13]. In view of aforesaid, this revision petition is partly allowed in the manner as discussed above.

August 23, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No