

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

**CR No.1823 of 2016
Decided on: 11.03.2016**

Sunder

....Petitioner

Versus

Devi Dass through his LRs and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Adarsh Jain, Advocate
for the petitioner.

REKHA MITTAL J.

The present petition lays challenge to order dated 24.02.2016 passed by the trial Court, dismissing application for additional evidence filed by the plaintiff/petitioner.

Counsel for the petitioner contends that the petitioner has filed a suit for declaration, possession and permanent injunction in respect of residential plot depicted with letters A, B, C, D in Green and Red colours in the site plan, measuring 30 ft. x 155 = 506 sq. yds comprised in Khasra Nos.896 and 897 situated in Mohalla Jaindipura within municipal limits of Palwal, detailed in headnote of the plaint. The petitioner purchased the said plot from Sh. Banwari Lal son of Chiranji Lal Gupta through his General Power of Attorney Sh. Gian Chand (Defendant No.15) vide registered sale deed dated 21.04.1992 for a sale consideration of Rs.20,000/-. Mutation on the basis of sale deed was sanctioned in favour of the petitioner. It is argued that after purchase of the plot in question, the petitioner raised construction

detailed in para 3 of the plaint and the same is existing on the spot. The contesting respondents have alleged that they have purchased the property in Khasra Nos.896 and 897 in the year 2007 from Sh. Banwari Lal Gupta through his attorney Sh. Gian Chand and they are claiming them to be owner in possession of the suit house. It is further argued that as the petitioner claims to have raised construction existing at the spot in the year 1992 and the defendants claim to have purchased some area out of Khasra Nos.896 and 897 in the year 2007, it would be expedient in the interest of justice if the petitioner is permitted to examine a building expert to prove age of the structure/construction existing on the spot. It is further argued that no prejudice would be caused to the contesting respondents if application filed by the petitioner for additional evidence is allowed as the respondents/defendants would be entitled to rebut the additional evidence.

I have heard counsel for the petitioner and perused the records particularly the impugned order.

In the sale deed executed in favour of the petitioner, khasra number of the property has been described as 890. The petitioner is claiming himself to be owner in possession of the suit property, admittedly part of Khasra Nos.896 and 897. A casual reading of the plaint would reveal that it has not been specifically mentioned therein that the petitioner raised construction of his residential house over some part of the suit property in the year 1992. On the contrary, it is averred that just after purchase of land in dispute, the plaintiff raised

construction of his residential house. The petitioner has examined as many as sixteen witnesses to establish his claim to the suit property comprised in Khasra Nos.896 and 897 as against the khasra number mentioned in the sale deed. He knew from the inception of litigation that there is a serious dispute between the parties if the plaintiff can claim ownership and possession of the suit property comprised in Khasra Nos.896 and 897 despite that in the sale deed dated 21.04.1992, khasra number of the property has been described to be 890. It was also known to the plaintiff/petitioner that the defendants are claiming ownership and possession of the suit property comprised in Khasra Nos.896 and 897 on the basis of sale deed executed in their favour in the year 2007. There is nothing on record suggestive of the fact that the petitioner could not examine the building expert despite exercise of due diligence.

Keeping in view the facts and circumstances of the present case, I find myself unable to accept submissions made by counsel for the petitioner or to find any fault much less illegality in the order impugned.

For the foregoing reasons, finding no merit, the petition is dismissed *in limine*.

(REKHA MITTAL)
JUDGE

11.03.2016
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