

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2316 of 2016

Date of Decision: 01.04.2016

Surjan Singh

... Petitioner(s)

Versus

Chanan Kaur and others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 17.2.2016, passed by learned Civil Judge (Senior Division), Moga, whereby application, filed by the petitioner/plaintiff, for leading additional evidence was dismissed.

Notice of motion.

Mr. Jagraj Singh Khiwa, Advocate, who is present in the Court, accepted notice on behalf of respondent No.1-Chanan Kaur and filed his power of attorney.

Learned counsel for the petitioner, while challenging the order dated 17.2.2016, submitted that the Court below has wrongly dismissed the application. As per petitioner, he had filed main suit for

seeking declaration to the effect that he has a legal right to use the electric connection No. T-3/118 (AP) of 10 HP installed in his land bearing khasra No. 45//23 situated in village Kamal Ke, District Moga. The said electric connection was in the name of Kashmir Singh on the basis of family settlement. The said electric connection has been transferred in the name of defendant No.1-Chanan Kaur. Defendants contested the suit. In the said suit, petitioner filed an application for leading additional evidence and the same was dismissed by the Court below without considering the material facts.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that additional evidence was sought in rebuttal evidence, so as to produce the following documents:-

- "i) Dealing Clerk, office of Sub Registrar, Zira along with sale deed dated 18.6.1976 document No. 1493, registered with the office of Sub Registrar, Zira.*
- ii) Affidavit dated 30.6.1975 sworn by Kashmir Singh son of Fateh Singh r/o village Kamal Ke, District Ferozepur. The said affidavit was duly attested by Shri Jagan nath, Cath and affidavit of Commissioner, Moga.*
- iii) Mr. Harish Chander, Astham Farosh, Moga with relevant register bearing entry No. 3799 dated 30.6.1975."*

The ground taken for additional evidence was that applicant

could not prove legality of the said documents earlier because of inadvertence and the same be allowed by way of additional evidence. Respondent No.1 contested the application *inter alia* taking the plea that the grounds taken in the application are incorrect and the same is liable to be dismissed. The Court below considered all these aspects and passed a detailed order that civil suit was filed on 21.1.2015 and after framing of issues, plaintiff availed seven effective adjournments so as to lead the evidence. The additional evidence, which the applicant/petitioner wants to lead by way of additional evidence should have been led when more than reasonable opportunities were given to the plaintiff to lead the evidence in affirmative. The additional evidence cannot be allowed in a routine manner, especially in the background that provisions of Order 18 Rule 17A CPC has already been omitted. No doubt, the Court has got power under Order 18 Rule 3 CPC read with Section 151 CPC, such an evidence can be allowed but the party has to make a case for exercising such a power in exceptional case but that is not the case before this Court. Such a law has been laid down by Hon'ble the Apex Court in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India 2005(3) RCR (Civil) 530.***

In view of above, the Court below has rightly dismissed the application, filed by the petitioner/plaintiff. Hence, present petition stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

April 1, 2016
"DK"