

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3511 of 2016

Date of Decision: 19.05.2016

Sat Narain and Another

... Petitioner(s)

Versus

Smt. Santosh 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. Bhupender Singh, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 25.4.2016, passed by learned Additional Civil Judge (Senior Division), Panipat, whereby application filed by the plaintiffs under Section 151 CPC for leading additional evidence was dismissed.

Relevant facts of the case that plaintiffs filed civil suit for declaration that mutation No. 543 dated 17.4.1980 sanctioned on the basis of judgment & decree dated 30.1.1978, passed in favour of Prem Chand, predecessor-in-interest of defendants No.1 to 3 and other

subsequent entries are illegal, null and void.

Learned counsel for the petitioners submitted that a specific plea was taken that Chander Bhan had no knowledge regarding pendency of civil suit and he was neither served with summons in Civil Suit No. 85 of 1978 nor engaged any counsel nor filed any written statement. The said judgment & decree is an act of fraud played by Prem Chand upon Chander Bhan as well as the Court by impersonating some other person in place of Chander Bhan. As per learned counsel for the petitioners, this fact came to the knowledge of the petitioners when they got thumb impression of Chander Bhan, at the time of execution of sale deed bearing vasika No. 1399, in the office of Sub Registrar, Panipat on 21.6.1979. The said sale deed was not in the knowledge of the petitioners and now they wanted to get thumb impressions of Chander Bhan on the sale deed compared with the alleged thumb impression on the written statement, power of attorney and statement made before the Court in Civil Suit No. 85 of 1978 from the Handwriting and Finger Prints Expert and prove the same. For that purpose, prayer has been made for leading additional evidence under Section 151 CPC, which was declined by the Court below erroneously and without considering the fact that additional evidence was not essential for just decision of the case. On this point reliance was placed upon the judgment of Hon'ble the Supreme Court in ***K.K.Velusamy v. N.Palanisamy 2011 AIR SC (Civil) 1000***, wherein a view was taken that in case the evidence to be led by way of additional evidence is material and there was valid reason for non-production of such

evidence at earlier stage, the same should be allowed by way of additional evidence.

Having considered the submissions made by learned counsel for the petitioners and appraisal of the record as well as impugned order dated 25.4.2016, this Court is of the considered view that the facts of the present case are distinguishable from the facts of the judgment rendered by the Hon'ble Supreme Court in ***K.K.Velusamy's case*** (*supra*). More so, most of the facts are not disputed that petitioners as plaintiffs have already led the evidence before the Court below and thereafter defendants also led their evidence and the same was also closed and now the case is at the stage of rebuttal evidence and arguments before the Court below. At this stage, additional evidence has been sought to be led. This Court has also considered the view taken by the Hon'ble Apex Court in ***K.K.Velusamy's case*** (*supra*) and of the view that undisputedly under Section 151 CPC, the Court should allow the evidence if the same could not be allowed earlier. But at the same time, the Court must consider the fact whether the said evidence was earlier in the knowledge of the party and the same could be produced by exercising due diligence. At the same time, the Court is also to see whether petitioner wants to take up entirely a new plea so as to set up the case for de novo trial. In fact, present case is of such a nature because the evidence which the petitioners want to lead was in existence much earlier and if at all, they wanted to get the thumb impression of Chander Bhan compared, such an application should have been moved when due opportunity was

given to the petitioners. However, application has been filed just at the fag end of the trial.

More so, onus to prove main issue No.1 was upon the petitioners and such an evidence cannot be allowed by way of rebuttal evidence. Such a mater was before the Division Bench of this Court in ***Avtar Singh and Another v. Baldev Singh and Others (Civil Revision No. 2203 of 2010, decided on 21.11.2014)***. Otherwise also, present plea was in existence earlier, but the same was not taken and by merely taking a plea that petitioners came across with some sale deed dated 21.6.1979, they cannot be allowed to reopen the entire case and to fill up the lacuna in the case and the Court below has rightly dismissed the application.

Resultantly, present petition is hereby dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

May 19, 2016
"DK"