

Civil Revision No.4828 of 2016(O&M)

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4828 of 2016(O&M)
Date of Decision:05.08.2016

Balraj Gupta

---Petitioner

vs.

Jaswinder Singh Sangha and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sanjay Tangri, Advocate
for the petitioner

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

CM No.15091-CII of 2016

Allowed as prayed for. Annexures P-6 to P-11 are taken on

record subject to just exceptions.

CR No. 4828 of 2016

The present petition has been directed against order dated 14.7.2016 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Jalandhar whereby application for permission to lead additional evidence filed by the petitioner/defendant was ordered to be dismissed.

Jaswant Singh and others (respondents) have filed a suit for recovery of Rs. 1,50,00,000/- on the basis of agreement to sell dated 8.1.2007 in respect of land measuring 23 kanals 04 marlas on the premise that the defendant/petitioner failed to perform his part of the agreement in compliance with the terms and conditions settled between the parties. In the alternative, prayer for mandatory injunction to direct the defendant to get the redemption of illegal mortgage made by the defendant and to execute the sale deed on the basis of agreement to sell has been made.

Parties were directed to adduce evidence in support of their respective claims. The evidence of the petitioner was closed by order vide order dated 18.1.2016 after the petitioner having examined four witnesses during the course of his evidence with effect from 8.7.2015 till 18.1.2016.

The respondents/plaintiffs did not adduce any evidence in rebuttal and they closed their evidence on 2.2.2016 after submitting written arguments on behalf of the plaintiffs.

On 4.2.2016, the present application was filed by the petitioners seeking permission to adduce additional evidence to tender certain documents, detailed in para 3 of the application namely (a) registered sale deed of area measuring 5 kanals of suit property in the name of Anil Gupta, bearing number 1486 dated 21.5.2003 (b) registered sale deed of area measuring 6 kanals 12 marlas of suit property in the name of Anil Gupta, bearing number 1484 dated 21.5.2003 (c) mutation of suit property measuring 11 kanals 12 marlas in the name of Anil Gupta (d) an agreement to sell with regard to 11 kanals 12 marlas out of suit property dated 13/3/2007 executed by Yash Kumari in favour of Balraj Gupta and (e) general power of attorney with regard to land measuring 11 kanals 12 marlas executed by Anil Gupta in favour of Joginder Singh son of Gurcharan Singh and Yash Kumari wife of Bhawani Dass bearing registration number 5051 dated 9.1.2016. The reply to the application was filed by the respondents/plaintiffs and the learned trial court dismissed the

application vide order impugned. A relevant extract from the impugned order reads as follows:-

“Heard on application for permission to lead additional evidence moved by defendant. The assertions of the applicant are that at the time of leading evidence, certain registered documents could not be brought on record which are very material for deciding the real controversy between the parties in the present suit. Ld. Counsel has relied upon case law '2015(5) RCR (Civil) 661', '2007(4)RCR(Civil 408', '2007 (1)RCR (Civil) 385' and '2009(3)RCR(Civil) 671'. Reply to this application was filed denying the assertions thereof. However, Ld. Counsel has relied upon case law '2012(3) RCR (Civil) 455' as per which after closure of evidence additional evidence cannot be allowed. Adequate opportunities were granted to the defendant for the conclusion of his evidence and eventually same was closed by order on 18.1.2016. Moreover, documents sought to be produced were well within his knowledge. In view of case '2012(3)RCR(Civil) 455' (supra), the application

deserves dismissal and same stands dismissed.”

The learned trial court dismissed the application primarily on two grounds i.e. adequate number of opportunities were granted to the defendant for conclusion of evidence and eventually the same was closed by order on 18.1.2016. The documents sought to be produced were well within his knowledge.

Counsel for the petitioner has submitted that additional evidence can be allowed to be adduced at any stage of the proceedings. For this purpose, he has referred to judgments of this Court *Manmohan Singh vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur and others, 2015(5)RCR (Civil) 661, Chattar Singh vs. Mehar Singh 2002(1) RCR (Civil)757, Kesar Singh vs. Megh Singh* (RSA No. 3620 of 2012 decided on 15.2.2016) and *Civil Revision No. 3484 of 2015 titled “Ramesh Bhasin and another vs. Deepak Dhar and others”* decided on 18.12.2015. It has further been argued that if the evidence sought to be adduced has a material bearing on just decision of the case, neither delay in filing the application nor failure of the applicant to satisfy the ingredients of due diligence should be allowed to stand in the way of substantial justice.

I have heard counsel for the petitioner, perused the paper book, various annexures and copy of the written statement to the amended plaint made available during the course of arguments.

The respondents/plaintiffs have staked their claim for recovery and in the alternative for mandatory injunction by alleging that the petitioner/defendant while alleging to be owner in possession of land measuring 23 kanals 4 marlas assured them that the land has been purchased in two intervals. Firstly, land measuring 11 kanals 12 marlas was purchased by way of sale deed No. 3233 dated 6.7.2006 and secondly, land measuring 11 kanals 12 marlas has been purchased by way of agreement to sell with one Parveen Kumar. The entire land was agreed to be purchased for a sale consideration of Rs. 1,25,00,000/- per acre and an amount of Rs. 75,00,000/- has already been paid to the petitioner/defendant, detailed in para 2 to 4 of the plaint. In para 5, it has been alleged that the petitioner/defendant was to arrange the power of attorney with regard to land measuring 11 kanals 12 marlas from Parveen Kumr but he failed to do so despite repeated requests. In para 7-A, it has been alleged that the petitioner/defendant failed to produce agreement to sell in respect of 11

kanals 12 marlas alleged to have been executed with Parveen Kumar and also failed to produce the attorney and show documents of ownership. In response to para 7-A, the petitioner/defendant has averred that ownership of the defendant over suit property had been fully satisfied by the plaintiffs before entering into agreement in question for purchase of land. All the necessary documents had been in possession of the defendant for the purpose of conveying good and marketable title in the land agreed to be sold to the purchasers but the plaintiffs committed breach of the agreement as they did not have the requisite money for payment of balance sale consideration. It is wrong that the defendant had any right to receive the amount of Rs. 75,00,000/-.

As has been noticed hereinbefore, in para 7-A, the main grievance of the respondents/plaintiffs is that the petitioner/defendant neither produced agreement to sell of 11 kanals 12 marlas executed with Parveen Kumar nor produced attorney as stated in the agreement. Counsel for the petitioner has not disputed that as per the agreement, admittedly, entered into between the parties, there is reference to an agreement qua land measuring 11 kanals 12 marlas having been executed with Parveen Kumar

and further the petitioner having undertaken to get attorney from said Parveen Kumar in order to execute the sale deed qua total land measuring 23 kanals 4 marlas in favour of the proposed vendee. None of the documents now sought to be produced by way of additional evidence either refers to agreement to sell of 11 kanals 12 marlas executed with Parveen Kumar or a power of attorney executed by said Parveen Kumar in respect of the aforesaid land. On a query raised by the Court as to whether the documents sought to be produced by way of additional evidence makes reference in the written statement or in a list of documents, if any, appended with the written statement under Order 8 Rule 1-A CPC, counsel has submitted that though these documents do not find specific reference in the written statement but in view of the plea raised in para 7-A of the written statement that all the necessary documents have been in possession of the defendant for the purpose of conveying good and marketable title in the land agreed to be sold to the purchasers, the documents sought to be produced by way of additional evidence are necessary for complete and effective adjudication of the matter in controversy.

Apparently, the documents in question do not find mention in the written statement nor in any list required to be filed under Order 8 Rule

1-A CPC,

Not only this, petitioner Balraj Gupta appeared in the witness box to counter case of the respondents/plaintiffs and tendered into evidence his affidavit Ex. DW1/A (Annexure P-7) by way of examination in chief. A casual reading of the said affidavit would evident that there is not even a whisper with regard to his being in possession of necessary documents for the purpose of conveying good and marketable title in the land agreed to be sold to the purchasers much less to the documents in question, sought to be produced by way of tendering in evidence as additional evidence. It necessarily implies that the additional documents remain alien to the proceedings till the application for additional evidence is filed. In case the petitioner is allowed to produce these documents even after evidence in rebuttal is closed, the opposite party would be altogether taken by surprise. This apart, the agreement to sell referred to in sub para (d) of para 3 of the application is not per-se admissible. Above all, counsel for the petitioner made a false contention that Parveen Kumar and Yash Kumari are the same persons but Yash Kumari has been stated to be wife of Bhawani Dass as per document mentioned against Sr. No. (e) of para 3 of the application.

In view of the above, the documents sought to be produced by way of additional evidence are clearly beyond pleadings and have not seen the light of day during course of trial that remained pending for the past six years. Even otherwise, plea of the petitioner that production of additional evidence is necessary for complete and effective adjudication of the matter in controversy is highly misconceived and untenable.

The learned trial court failed to advert to this material and important aspect of the matter and dismissed the application on the twin grounds of delay and lack of due diligence. However, in view of the discussion made hereinbefore, even if the factum of delay and due diligence is disregarded, the petitioner has no case to satisfy the court that the additional evidence can be allowed in the circumstances. That being so, the petitioner cannot derive any advantage from the referred judgments rendered in peculiar facts and circumstances.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

05.08.2016

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes