

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

CR No.4578 of 2014

Decided on: 25.10.2016

Kasturi and another

....Petitioners

Versus

Dharam Pal and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Abhinav Singh, Advocate
for Mr. Vikram Singh, Advocate for the petitioners.

Mr. Akshay Jindal, Advocate for the respondents.

REKHA MITTAL, J.

The present petition directs challenge against order dated 11.07.2014 (Annexure P5) passed by the Civil Judge (Jr. Division) Karnal whereby application (Annexure P3) for leading additional evidence has been dismissed.

Counsel for the petitioners has submitted that Joti Ram son of Ramji Lal was owner in possession of land measuring 54 kanals 12 marlas situated in village Mahanmati, Tehsil and District Karnal. Joti Ram had three sons namely Madan, Dharampal and Karam Chand and three daughters Bala Devi, Kamla Devi and Bohti Devi. The petitioners are the successors-in-interest of Karam Chand whereas Dharampal is defendant No.1 and his sons Pawan and Sanjay are defendants No.2 and 3. Dharampal filed civil suit No.476 of 1986 titled *Dharampal vs Joti Ram* seeking declaration of ownership of land measuring 18 kanals 4 marlas i.e. 1/3rd share of land measuring 54 kanals 12 marlas. The suit was decreed by the Court vide judgment and decree dated 13.11.1986. Sh. Joti Ram passed away in the year 1988 and mutation of inheritance bearing No.597 was entered and sanctioned in favour of legal heirs of

Joti Ram. There arose a dispute amongst the heirs of Sh. Joti Ram as Dharampal previously got a decree in his favour of his share and also inherited share in the remaining land of Sh. Joti Ram by way of mutation. Due to intervention of friends, relatives and other respectables, a compromise was arrived at between the legal heirs of Sh. Joti Ram in July, 2002 and in that compromise, defendant No.1 admitted that he will not claim any right in future in remaining land of Sh. Joti Ram. Dharampal on the basis of compromise transferred land measuring 3 kanals i.e. 60/1092 share of land measuring 54 kanals 12 marlas vide relinquishment deed No.3120/1 dated 05.08.2002 in favour of Brij Mohan, Jagmohan, Suraj Bhan and Arjun sons of Madan Lal son of Joti Ram. He (Dharampal) also assured the plaintiffs that he will transfer their share i.e. land measuring 3 kanals in their favour but failed to do so.

It is argued that in the written statement filed by the respondents/defendants, it was pleaded that Dharampal executed the release/relinquishment deed dated 05.08.2002 in favour of Brij Mohan, etc. out of love and affection but when Dharampal appeared in the witness-box, he changed his stance by deposing that he received an amount of Rs.10,00,000/- from Brij Mohan and others for executing relinquishment deed in their favour. It is vehemently argued that in view of serious contradiction in stand of the defendants in the written statement and testimony of Dharampal – DW1, it has become necessary to prove the relinquishment deed, therefore, the petitioners should be permitted to adduce additional evidence by setting-aside the order impugned. It is further submitted that no prejudice shall be caused to

the respondents/defendants, if the relinquishment deed, admittedly, executed by Dharampal is proved in accordance with law when otherwise the respondents would get an opportunity to rebut the additional evidence.

Counsel for the respondents, on the contrary, has refuted contentions of the petitioners with the submissions that as relinquishment deed executed by Dharampal in favour of Brij Mohan and others was to the knowledge of the petitioners from the inception of proceedings, they cannot be permitted to raise a plea that the additional evidence was either not to their knowledge or the same could not be adduced despite exercise of due diligence. It is further argued that even if there is any contradiction in the plea raised in the written statement and the stand during course of evidence, the same shall be appreciated by the trial Court at an appropriate stage of the proceedings but it is not sufficient to permit the petitioners to adduce additional evidence. It has further been argued that the relinquishment deed, copy whereof was produced during course of hearing, does not contain any reason that weighed in the mind of executant to relinquish his right in land measuring 3 kanals in favour of Brij Mohan and others.

I have heard counsel for the parties, perused the paperbook, copy of the relinquishment deed and the impugned order.

There is no dispute that the petitioners are aware of the relinquishment deed since institution of the suit as relinquishment deed finds reference in para 4 of the plaint. The respondents/defendants have not denied execution of the relinquishment deed but they have denied

any compromise having been arrived at between the legal heirs of late Sh. Joti Ram in the month of July, 2002 or defendant No.1 having admitted that he will not claim any right in future in remaining land of late Sh. Joti Ram. As has been rightly argued by counsel for the respondents that even if there is any contradiction in the stand taken in the written statement *viz-a-viz* the evidence adduced, the same shall be taken care of by the trial Court at the time of disposal of the suit on merits but does not constitute a ground for permitting the petitioners to adduce additional evidence. This apart, perusal of the copy of the relinquishment deed would make it evident that the same does not make reference to any consideration on account of which Dharampal relinquished his right in land measuring 3 kanals in favour of Sh. Brij Mohan and others. In this view of the matter, I find myself unable to accept plea of the petitioners that either proving of relinquishment deed would enhance the cause of justice or the petitioners would suffer any prejudice in case they are not permitted to prove the relinquishment deed by way of additional evidence.

In view of what has been discussed hereinabove, the petition fails and is accordingly dismissed without any order as to costs. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

25.10.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No