

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.5849 of 2016

Date of Decision.08.09.2016

Sh. Baljit Singh (since deceased) through LRsPetitioner
Vs
Sh. Deepak MittalRespondent

Present: Dr. Pawan Kumar Aryan, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioners, legal representatives of deceased-defendant, Baljit Singh, are aggrieved of the dismissal of the application filed for seeking further cross-examination of PW-3, Deepak Mittal.

Dr. Pawan Kumar Aryan, learned counsel appearing for the petitioners submits that earlier Baljit Singh filed civil revision bearing No.8413 of 2014, which had been disposed of 10.09.2015 whereby Baljit Singh was permitted to lead secondary evidence with regard to agreement to sell dated 05.02.2009 and 28.05.2009. He submits that after the order of this Court, Baljit Singh died. Thereafter legal representatives of Baljit Singh filed C.R. No.3730 of 2016 challenged the order dated 05.05.2016 whereby they were not permitted to place on record the written statement being legal representatives of Baljit Singh but the same was dismissed. The legal representatives later on engaged another counsel and realized that relevant questions in respect of documents (Annexure P-7 (colly)) are required to be put to Deepak Mittal and is required to be confronted with the aforementioned documents, which they have not been able to do earlier. It is in this background of the matter, application (Annexure P-2) was moved, which has erroneously been dismissed.

I have heard learned counsel for the petitioners and appraised the paper book. The stand taken by the petitioners-defendants in suit for specific performance of the agreement to sell in paragraph 3 of the written statement reads thus:-

“That para No.2 of plaint is wrong and denied emphatically. The defendant never entered any agreement of sale with the plaintiff regarding the land in suit. In fact, the defendant had obtained a loan of Rs.8 lacs from the plaintiff on 29.07.2010 and had written the document dated 29.07.2010 as security of the said amount of ₹8 lacs and the defendant has returned the said amount to the plaintiff with interest, but document dated 29.07.2010 remained with the plaintiff in good faith as the defendant used to take financial help from the plaintiff and his friend Sh. Jitender Singh son of Sh. Saheb Singh previously also and had written documents dated 05.02.2009 and 28.05.2009 in favour of plaintiff and Jitender Singh and had returned the amount to them in time but the original of document dated 05.02.2009 and 28.05.2009 alleged agreement to sale are still lying with the plaintiff and similarly the original of document dated 29.07.2010 was with the plaintiff. So he now became dishonest and has filed the present false and frivolous suit overpowered with greed against the defendant. In fact, there was no agreement of sale in between the plaintiff and defendant.”

From the perusal of the aforementioned para, the existence of the documents proved. Ex.P7 is the affidavit of Deepak Mittal. The contents of the application under Order 18 Rule 17 CPC are also essential to reproduce, which read thus:-

“Sir,

The applicants respectfully submits as under:-

- 1. That the above mentioned cases pending before this Court and the same is fixed for today for evidence of the defendant.*

2. *That earlier the defendant was represented by Rishi Raj Pal Chaudhary, Advocate and he had cross-examined PW3 Deepak Mittal (plaintiff) but the material cross-examination on relevant documents which are already there on record was not done by the earlier counsel.*

3. *That the cross-examination of PW3, Deepak Mittal (plaintiff) by confronting with those documents is very necessary for the just adjudication of the case as that confrontation will prove the case of the plaintiff to be false one.*

4. *It is, therefore, most respectfully prayed that the plaintiff Deepak Mittal, PW3 may kindly be recalled for further cross-examination in the interest of justice, law and equity.*

Applicants.”

In my view, the petitioners-defendants are making an attempt to delay the progress of the suit and every time approaching this Court by moving one petition or the other. No reason has been given as to what/which questions are required to be confronted with the witness-Deepak Mittal. The petitioners-defendants cannot be permitted to move an application at the drop of the hat, much less, the witness Deepak Mittal, PW3, has already been cross-examined at length by the previous counsel. I am of the view the application was totally misconceived and devoid of merit.

I do not find any reason to differ with the order passed by the Court below, much less, the order cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed with costs of ₹10,000/-.

(AMIT RAWAL)
JUDGE

September 08, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No