

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

**CR No.6346 of 2016(O&M
Date of Decision- 23.09.2016**

Lakhman Singh

... Petitioner

Versus

Harpal Kaur

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Parminder Singh, Advocate for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 03.09.2016 passed by Civil Judge (Junior Division), Karnal whereby application for additional evidence filed by the petitioner for tendering the demarcation report, sale deed and *jamabandi* was dismissed.

[2]. Plaintiff filed a suit for possession with consequential relief of permanent injunction on the ground that plaintiff was owner of land measuring 0 kanal, 9 marlas out of total land measuring 4 kanals, 4 marlas comprised in khewat No.97, khatoni No.110, khasra No.101/2/2 (4-4) situated at Nilokheri Township as per *jamabandi* for the year 1999-2000.

[3]. Plaintiff alleged that he had purchased the suit land from Gajjan Singh son of Tarlok Singh resident of village Ramana Ramani, District Karnal. Defendant was owner of her

land comprised in khasra No.99 and khasra No.100/3 which was adjoining to khasra No.101/2/2.

[4]. Plaintiff further alleged that defendant had encroached upon a portion of land i.e. approximately 14 marlas of land owned by the plaintiff and other co-sharers. Defendant had raised a boundary wall over khasra No.101/2/2 without any right, title or interest. Plaintiff wanted to raise construction over his house over land measuring 0 kanal 9 marlas in khasra No.101/2/1. On being objected, plaintiff had to get a demarcation of khasra No.101/2/1 and found that the entire area purchased by him was in unauthorized possession of the defendant. With this background, suit in question came to be filed.

[5]. Plaintiff filed an application for leading additional evidence at the stage of rebuttal evidence. Plaintiff closed his evidence after examining himself as PW 1. Report dated 19.10.2009 was not tendered in affirmative evidence of the plaintiff. Plaintiff also alleged that the said demarcation report was in possession of one Shobha Singh who was also under litigation with the defendant. Shobha Singh appeared in the witness box and disclosed that he had taken demarcation of the land and report was in his possession. Plaintiff after procuring report from said Shobha Singh sought to bring the same on record by leading additional evidence.

[6]. The said application was opposed by the defendant. Trial Court dismissed the application on the ground of knowledge and due diligence.

[7]. Evidently, the suit was fixed for rebuttal evidence, if any or for final arguments. Plaintiff had already led his evidence in affirmative on the issues, onus of which was upon the plaintiff. In view of stand taken by the defendant in the written statement, plaintiff was required to lead his evidence in affirmative on the issues, onus of which was upon him.

[8]. Production of such type of evidence in rebuttal cannot be allowed as the evidence was required to be led in affirmative. There would be no opportunity to the defendant to counter such evidence after leading the same in rebuttal or by additional evidence as the same would have an effect of *de novo* trial. It cannot be simplicitor production of demarcation report because in the next step plaintiff would ask for leading evidence to prove the execution of such report as this report has originated from Shobha Singh.

[9]. Mere tendering of report in evidence would be of no consequence, until and unless its execution is proved. Plaintiff was well aware of said demarcation at the time of leading affirmative evidence, but did not produce the same at that time. Plaintiff himself has admitted in para No.5 of the plaint that he had knowledge of said demarcation report and had also obtained

the same when he came to know that the suit land come under the possession of the defendant. Plaintiff could not show any due diligence. Plaintiff has failed on both mandatory requirement of knowledge and due diligence for leading additional evidence. The additional evidence can only be allowed, if the Court comes to the conclusion that leading of such evidence would facilitate the Court or Court requires the same for effective adjudication of the case irrespective of due diligence not found at the instance of the plaintiff.

[10]. Even as per considered opinion of this Court, permission to lead additional evidence at this stage of rebuttal would definitely lead to *de novo* trial. It is not a simplicitor exhibition of report on record. The document is not *per se* admissible in law, rather would require proof of execution. After closing of evidence by both the parties when the case had reached the stage of rebuttal evidence and arguments, the production of such report would definitely lead to *de novo* trial as mere exhibition was not sufficient to prove execution of report. Even the demarcation report in question came to be noticed by the plaintiff from Shobha Singh, therefore, connecting evidence, evidence of author and demarcation would be relevant to prove execution of such report. In any case, this report cannot be allowed at this belated stage particularly when issues were framed on 09.12.2015. Plaintiff having availed 8 effective

opportunities to conclude his evidence and thereafter, evidence of the defendant was also closed on 03.08.2016.

[11]. In view of aforesaid, production of documents by way of additional evidence cannot be allowed. Resultantly, this revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

23.09.2016
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No