

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

CR No.6379 of 2015

Date of decision : 26.02.2016

Sanduri Devi and another

...Petitioners

Versus

Soran Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. G.S. Nagra, Advocate for the petitioners.

Mr. D.S Gurna, Advocate for the respondent No.2.

AMIT RAWAL, J. (Oral)

The petitioners-plaintiffs are aggrieved of the order, whereby application purported to be moved under Order 5 Rule 1 of Code of Civil Procedure seeking indulgence of this Court to examine Kanungo and expert witness to prove on record the original excerpts vis-a-vis the nature of the land, has been dismissed.

Mr. Nagra, learned counsel appearing on behalf of petitioners submits that suit was filed in the year 2007 challenging the sale deed executed by the respondents as it was beyond the legal necessity whereas property at the hands of vendor was ancestral, therefore could not have been

sold. The evidence of plaintiff was closed on 20.02.2014. The evidence sought to be brought on record by way of additional evidence is necessary and essential for the adjudication of the lis between the parties.

Mr. D.S Gurna, learned counsel appearing on behalf of respondents submits that plaintiffs are adopting delaying tactics as there is no substance of course in the suit which is evident from closing of evidence of the plaintiff. After closing of the evidence on 20.02.2014, the application for consolidation of the suit was filed, the same was dismissed, therefore present revision petition. On 19.08.2014 application in hand was filed. The suit is at the stage of closing of the evidence of the defendants. In case prayer in the application is allowed, it would tantamount to denovo of trial, much less, filling up the lacuna and thus prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that procedural law should not come into the way of the parties as it is handmade of justice. The aforementioned evidence in case is not brought on record would be fatal to the decision of the case as the sole basis of the suit is regarding the nature and character of the property being ancestral. In the absence of the evidence of Kanungo, who is being sought to be summoned to bring on record original excerpts, it is incumbent upon the plaintiff to prove the nature and character of the property as ancestral, the petitioner-plaintiff would not have able to prove the nature and character of the property which is requirement of law as per High Court Rules and Orders. No doubt that petitioner-plaintiff had been negligent and casual in not examining the witness or record before the conclusion of the

evidence in affirmative, however, where the parties can be compensated in terms of costs and should be permitted to cross-examine the witnesses and as well as check the genuinity and veracity of the documents sought to be placed on record by way of additional evidence.

Accordingly impugned order is set aside.

The petitioners-plaintiffs are granted one opportunity to examine the Kanungo to prove on record original excerpts vis-a-vis in support of the averments made, subject to the payment of cost of ₹10,000/- to be paid to the counsel for the respondent in the High Court.

Revision petition stands allowed.

26.02.2016

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**(AMIT RAWAL)
JUDGE**