

CR-611-2014

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-611-2014

Date of decision : 14.01.2016

Mukhtiar Singh

... Petitioner

Versus

Jarnail Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr.Kewal Krishan, Advocate
for the respondent.

REKHA MITTAL. J.

By invoking Article 227 of the Constitution of India, the petitioner has filed the instant petition to assail order dated 18.01.2014 passed by the Additional Civil Judge (Senior Division), Ajnala whereby the application filed by the petitioner for adducing additional evidence i.e. attested copy of voter list, original identity card and ration card, has been dismissed.

Counsel for the petitioner would contend that the respondent filed civil suit for possession of the suit property which was decreed ex-parte vide judgment and decree dated 24.09.2008 (Annexure P1). The petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure (in short 'CPC') for setting aside the ex-parte judgment and

decree. One of the allegations in the application is that the petitioner was not residing at the given address, therefore, he never received any process issued by the Court for his service. It is further argued that in order to prove his entitlement to get the ex-parte decree set aside on the aforesaid ground, the petitioner handed over attested copy of the voter list and original voter identity card to his counsel but due to inadvertent mistake, he did not tender these documents in evidence at the time of closing his evidence. It is further argued that the documents sought to be produced by way of additional evidence have been issued by a public authority and attested copy of voter list and original voter identity card is per se admissible in evidence. According to counsel, a serious prejudice would be caused to the petitioner in case he is not permitted to produce these documents by way of additional evidence.

Counsel for the respondent-decree holder has supported the impugned order with the submissions that the petitioner availed number of opportunities for leading evidence and voluntarily closed his case after adducing evidence. It is further argued that the petitioner cannot be allowed to fill up the gaps and lacuna in his case when otherwise there is nothing on record to suggest that either the evidence sought to be adduced by way of additional evidence was not within his knowledge or the same could not be produced despite exercise of due diligence.

I have heard counsel for the parties, perused the records and find that the petition is meritorious and deserves to be accepted.

The petitioner prayed for permitting him to tender into evidence attested copy of voter list, original voter identity card and ration card to substantiate his allegation that he was not residing at the given address and, therefore, none of the processes issued by the Court was ever tendered to him and thus, he did not receive any intimation in regard to pendency of proceedings before the trial Court. The documents sought to be produced by way of additional evidence are very material and relevant for disposal of the controversy. The rules of procedure are handmaid of administration of justice and same are to be applied with an intent to enhance the cause of justice and not to thwart the same. No prejudice would be caused to the respondent in case the petitioner is allowed to tender the documentary evidence by way of additional evidence as the respondent would get proper opportunity to rebut the additional evidence. There is no allegation that the petitioner intentionally avoided tendering these documents at an appropriate stage of the proceedings much less with an ulterior motive. In this view of the matter, I am of the considered opinion that the order passed by the trial Court is liable to be set aside and ordered accordingly. The petitioner is allowed to tender the aforesaid documents in evidence. However, the documents would be marked / exhibited in accordance with law.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the petitioner is allowed to produce the aforesaid documents by way of additional evidence.

Nothing stated in this order shall prejudice adjudication of the case by the trial Court, on its merits.

(REKHA MITTAL)
JUDGE

January 14, 2016.
Davinder Kumar