

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

**CR No.7509 of 2015(O&M)
Decided on. 04.11.2016.**

Kashmiri

.....Petitioner

Versus

Sattar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

None for respondent no.1.

Mr. S.K.Bawa, Advocate
for respondent no.2.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 05.10.2015 passed by the learned Civil Judge (Jr. Division), Mewat, vide which the application moved by the petitioner-plaintiff for leading the additional evidence has been dismissed.

2. Learned counsel for the petitioner-plaintiff contended that the petitioner wants to examine the stamp vendor, Tauru and Registration Clerk, office of Sub-Registrar, Tauru, which could not be examined earlier due to inadvertence. He contended that the examination of both these witnesses is essential for the just decision of the case particularly the issues regarding the execution of agreement as

well as readiness and willingness. Thus, he contended that the application moved by the petitioner for additional evidence has been wrongly dismissed by the learned trial Court. To support his contentions, he relied upon cases **Surjit Singh and others Vs. Gurwant Kaur and others 2014 (4) R.C.R (Civil) 343, Manmohan Singh Vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur and others 2015(1) PLJ 148, Naresh Vs. Brij Bhushan 2012(2) Law Herald 1134, Surinder Kapoor Vs. Gurdev Singh 2009(3) R.C.R (Civil) 595 and Smt. Kripal Kaur Vs. Smt. Gurmej Kaur and others 2006(4) ICC 527.**

3. On the other hand, learned counsel for respondent no.2 contended that the evidence of both the parties was already closed. There is no reason as to why this evidence could not be earlier adduced by the petitioner. He further contended that infact the plaintiff-petitioner wants to lead the additional evidence to fill up the lacuna in her case and to meet out the evidence adduced by the respondents. Thus, he contended that the application moved by the petitioner has been rightly rejected by the learned trial Court.

4. I have duly considered the aforesaid contentions.

5. The petitioner-plaintiff has moved the application to examine Mr. Nain Sukh, Stamp Vendor and Registration Clerk office of Sub-Registrar, Tauru in the additional evidence. The impugned order shows that the evidence was closed by the plaintiff voluntarily vide statement of his counsel. It is also not disputed that this application for additional evidence has been moved when the evidence of the defendant-respondent was already closed. Learned counsel for the

petitioner has contended that the aforesaid additional evidence was necessary for the just decision of the case particularly the issues regarding execution of agreement to sell and readiness and willingness. It is settled principle of law that a party can only be allowed to lead the additional evidence when that evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when he was leading the evidence. In the instant case, it cannot be stated that this evidence was not within the knowledge of the petitioner. No sufficient cause has been mentioned as to why this evidence could not be earlier produced by the petitioner despite exercise of due diligence. The petitioner has simply mentioned that these witnesses could not be examine earlier due to inadvertence. This vague plea of inadvertence cannot meet out the aforesaid requirements.

6. It is further the settled principle of law that no additional evidence can be allowed to fill up the lacuna/gap in its case by a party. This application has been moved by the petitioner at the fag end of the case when the evidence was already closed by the defendant. It appears that this application has been moved only to meet out the evidence adduced by the defendant. Moreover, the examination of the stamp vendor and registration clerk is also not essential for the just decision of the case in my opinion. The plaintiff can establish his readiness and willingness by adducing the other evidence also. Similarly, he can also established the execution of the agreement to sell by examining the witnesses of the agreement/scribe. So, examination of both these witnesses is not at all required for the just decision of the case.

7. Cases relied upon by learned counsel for the petitioner are

quite distinguishable of facts. In case **Surjit Singh and others Vs. Gurwant Kaur and others (supra)**, the Hon'ble Apex Court has laid down that the appellate Court may allow the production of evidence at the appellate stage if it finds that it is really necessary to accept the documents to enable it to pronounce the judgment. As already discussed, the evidence sought to be led in the additional evidence is not at all essential for the just decision of the case. In case **Manmohan Singh Vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur and others (supra)** and **Naresh Vs. Brij Bhushan (supra)**, also it was found that evidence ought to be adduced in additional evidence was essential for the just decision of the suit, which is not so in the present case. In case **Surinder Kapoor Vs. Gurdev Singh (supra)**, the evidence of the defendant was closed by order. In those circumstances, the additional evidence was allowed whereas in this case, the evidence was voluntarily closed by the plaintiff-petitioner and she was fully aware about the aforesaid evidence sought to be adduced in the additional evidence even at the time when she was leading her evidence. In case **Smt. Kripal Kaur Vs. Smt. Gurmej Kaur and others (supra)**, the witness sought to be produced in the additional evidence could not be produced earlier as he was ill and was an old man. But, in the instant case, there are no such circumstances. So, all these cases are of no help to the petitioner.

8. Thus, I do not find any illegality in the impugned order passed by the learned trial Court dismissing the application of the petitioner/plaintiff seeking permission to lead the additional evidence.

Therefore, it does not call for any interference by this Court.

9. Thus, the present revision petition having no merits, is hereby dismissed.

November 04, 2016

S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No