

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8664 of 2016

Date of Decision: December 22, 2016

Sarup Singh

...Petitioner

Versus

Milkha Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ajay Pal Singh Rehan, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the three orders, i.e., dated 22.8.2016 closing of the evidence by order; (2) 26.9.2016 dismissal of the application calling upon the defendants to produce the original exchange deed dated 1.4.2002; and (3) 26.9.2016 dismissal of the application seeking permission to appoint Handwriting and Finger Print Expert to examine the original exchange deed.

Mr.Ajay Pal Singh Rehan, learned counsel for the petitioner-plaintiff submits that the suit is for declaration challenging the mutation as per which the respondent-defendants had got the property mutated on the basis of the exchange deed. The aforementioned mutation has been challenged. Until and unless the exchange deed, alleged by the defendants, is not brought on record, the suit cannot succeed. It is in this backdrop of the matter, the aforementioned applications were filed. The evidence had already been led, thus, there is gross illegality and perversity in the

impugned orders.

I have heard the learned counsel for the petitioner-plaintiff and appraised the paper book.

Since there is a challenge to the mutation, it was incumbent upon the petitioner-plaintiff to summon the concerned official from the revenue department whether the exchange deed, allegedly set up by the respondent-defendants, is part and parcel of it or not. The consequences would have helped the petitioner-plaintiff to proceed with the suit. Since the defendants have heavily relied upon the exchange deed, it is they who have to produce it and in the absence thereof, the plaintiff can always pray to the Court for drawing of adverse inference, but not in the manner and mode as has been adopted as the case is slated for defendants' evidence.

In the absence of the original exchange deed, the examination of the same by an expert could not have been done. The onus of producing the exchange deed is upon the defendants. In case, the original exchange deed is brought on record, the plaintiff can always avail the remedy in rebuttal in accordance with law.

At this stage, learned counsel for the petitioner-plaintiff says that he wants to examine only one witness from the revenue department on any terms and conditions to be imposed by this Court.

In view of the statement of the learned counsel, the petitioner-plaintiff is granted one opportunity to examine one witness from the revenue department subject to payment of Rs.5,000/- as costs, which shall be condition precedent.

Accordingly, the impugned order dated 22.8.2016 closing the evidence of the petitioner is set-aside, whereas the orders dated 26.9.2016

are upheld.

Revision petition stands disposed of.

December 22, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No