

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.928 of 2014

Date of Decision:22.3.2016

Ramesh Chand

---Petitioner

vs.

Kashturi Devi and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Karan Singh, Advocate
for the petitioner

Mr. Sanjiv Gupta, Advocate
for the respondents

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

Rekha Mittal, J.

Challenge in the present petition has been laid to the order dated 28.1.2014 (Annexure P-4) passed by the Civil Judge (Junior Division), Yamunanagar at Jagadhari, dismissing application of the petitioner for additional evidence.

The respondents-plaintiffs have filed a suit claiming right in the suit property on the premise that the same is ancestral in the hands of

Sh. Genda Ram who passed away on 3.2.1995. They have also challenged the Will dated 30.1.1995 alleged to have been executed by Sh. Genda Ram in favour of Sh. Ramesh Chand petitioner-defendant. As a matter of fact, the litigation is between the sisters on one side (plaintiffs) and the brother being the defendant.

The petitioner-defendant has controverted the allegations that the suit property is ancestral with the plea that it is self acquired property and Genda Ram performed marriage of the plaintiffs who are well settled in their matrimonial homes and he (Genda Ram) executed a valid Will dated 30.1.1995 in his favour.

Counsel for the petitioner contends that evidence of the petitioner was closed by order of the Court but at that time, counsel for the petitioner failed to tender into evidence certified copies of documents, detailed in para 2 of the application, due to inadvertent mistake. It is argued that the documents sought to be produced by way of additional evidence are certified copies of jamabandis and mutation thus, are of unimpeachable credibility. The documents are material to rebut case of the respondents-plaintiffs and substantiate plea of the petitioner that the suit property is self acquired property of Sh. Genda Ram and the respondents cannot claim any right therein on the plea that it was ancestral in the hands of Sh. Genda Ram. A serious prejudice rather irreparable loss would be caused to the petitioner in case he is not permitted to adduce additional evidence.

Counsel for the respondents has supported the impugned order with the submissions that inadvertent mistake on the part of a counsel is no ground to allow additional evidence. It is urged that the learned trial court,

on a detailed consideration of the matter, has rightly dismissed the application. As evidence of the petitioner was closed by order, the application for additional evidence is not maintainable without assailing the order by which the evidence was closed.

I have heard counsel for the parties and perused the records.

It is an admitted position of the case that the parties are litigating primarily on two issues. The first question relates to nature of the suit property and the second is qua the Will in question. There is no denial that the documents sought to be tendered into evidence by way of additional evidence are the certified copies of jamabandis and mutation etc., already available on records of the trial court. Counsel for the respondents has not disputed that the documents are relevant and material for deciding the core issue in regard to nature of the suit property. The very fact that the documents are available on record and counsel for the petitioner did not bother to tender the documents in evidence on the day evidence of the petitioner was closed by order is sufficient to substantiate plea of the petitioner that the documents were not so tendered due to inadvertent mistake or carelessness on the part of his counsel and the petitioner can not be penalized for the said mistake in the given circumstances.

The question of adducing additional evidence would arise only in the circumstances that evidence of a party stands closed. It hardly matters if the evidence is closed in view of the statement made by the party or because of an order passed by the Court. In view of the above, I am of the considered opinion that technicalities should not be allowed to stand in the way of the petitioner to tender into evidence the documents, detailed in

para 2 of the application subject, however, that the question of admissibility of the documents is left open to be decided by the trial court.

With the observations made hereinbefore, the impugned order is set aside, the petition is allowed subject to costs of Rs. 5,000/- to be deposited with the Legal Services Authority, Yamuna Nagar. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

22.3.2016
paramjit