

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3442 of 2017
DECIDED ON: May 12, 2017

SMT. CHAND KAUR

.....PETITIONER...

VERSUS

SMT. KAMLESH DEVI

....RESPONDENT...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sandeep Singh Ghangas, Advocate
for the petitioner.

JASPAL SINGH, J.

Through instant revision petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 24.04.2017 passed by Civil Judge (Jr. Division), Panipat whereby the application filed by the petitioner seeking direction to the respondent-plaintiff to produce the original agreement to sell dated 23.05.2011 has been dismissed.

2. While assailing the impugned order dated 24.04.2017, it has been submitted by learned counsel for the petitioner that the ld. trial court has failed to appreciate the fact that when PW-1 was being cross-examined, it came to light that prior to agreement dated 28.10.2011, the respondent-plaintiff had earlier executed another agreement to sell on 23.05.2011 with Ritik and Deepak both minors through their mother Smt. Raj Bala and at the time of its execution, a sum of Rs.11,00,000/- was paid as earnest money to Smt. Raj Bala. The sale deed was to be executed on 22.05.2012. It has also been admitted by respondent/plaintiff in her cross-examination that she has not received back the aforesaid amount from Smt. Raj Bala which was subsequently, adjusted in the

agreement of sale dated 28.10.2011. Thus, the agreement of sale dated 23.05.2011 sought to be produced by the petitioner/defendant is very much essential for the just decision of the case. As such, the impugned order is not sustainable in the eyes of law and deserves to be set aside. Consequently, the application deserves to be allowed.

3. This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but does not find any legal and factual force therein.

4. Undisputably, none of the parties to the suit made even a slightest reference in their pleadings in respect of the agreement to sell dated 23.05.2011. It was only a suggestion given to PW-1 during her cross-examination. Moreover, a party cannot be compelled to produce certain document(s) when it is not relevant for the proper adjudication of the matter in controversy and is not related to the pleadings of the parties. The plaintiff is a *dominus litis* and has all the prerogative to plead or abstain from pleading any particular fact. Moreover, when it is not the case of either of the parties that an agreement to sell dated 23.05.2011 was executed, the application has been rightly dismissed by the Id. trial court. This Court does not find any infirmity or perversity in the impugned order.

5. In the light of what has been discussed above, this court does not find any merit in the instant petition. Accordingly, it stands dismissed.

May 12, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No