

C.R. No. 3901 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 3901 of 2016

DATE OF DECISION: 21.2.2017

Kuljit Singh

.....Petitioner

Versus

Gurmeet Singh

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. Vaibhav Sehgal, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside orders dated 3.5.2016 and 17.5.2016 passed by Civil Judge (Junior Division), Ludhiana in Civil Suit No. 4154 of 2015 titled as “Kuljit Singh Vs. Gurmeet Singh”.

Briefly, the facts of the case are that the petitioner filed a suit for possession of plot/built up house by way of specific performance of the agreement to sell dated 18.12.2004 and also for directing the respondent to get executed and registered the sale deed of the land in dispute or in alternative suit for recovery of ₹2 lacs. Initially civil suit No. 107 dated 12.5.2005 was filed by the petitioner, in which, the respondent was proceeded ex parte vide order dated 30.7.2005 as he failed to appear.

Thereafter the suit was decreed in favour of the petitioner vide judgment and decree dated 15.4.2011 passed by Civil Judge (Junior Division), Ludhiana and execution application was also filed. Respondent moved an application dated 11.6.2012 for setting aside ex parte judgment and decree dated 15.4.2011, which was allowed by the trial Court vide order dated 25.2.2015 and the case was fixed for filing written statement. Written statement to the civil suit was filed on 27.5.2015. The evidence of the petitioner was closed on 1.12.2015 and the evidence of the respondent was closed on 20.2.2016. Thereafter the petitioner moved an application dated 25.2.2016 for permission to summon Patwari Halqa as in the jamabandi name of Gurmeet Singh was wrongly entered as Gurpreet Singh. Said application was dismissed vide order dated 3.5.2016. Thereafter another application dated 6.5.2016 was moved by the petitioner for permission to lead additional evidence by summoning Patwari Halqa for proving the correctness of jamabandi on the Court file. Said application was also dismissed vide order dated 17.5.2016. Orders dated 3.5.2016 and 17.5.2016 are subject matter of challenge in the present revision petition.

Learned counsel for the petitioner contends that the trial Court has not appreciated the case in the right perspective and has not interpreted the law involved in the case. The evidence of the petitioner was closed on 1.12.2015. The petitioner brought on record the copy of the jamabandi for the year 1999-2000 by way of evidence, which was issued by Charanjit Singh, Patwari in the name of Gurpreet Singh. The evidence of the respondent was closed on 20.2.2016. As per copy of jamabandi prepared on 23.2.2016, Gurpreet Singh was recorded and not Gurmeet Singh. The application for summoning Patwari Halqa was moved in rebuttal evidence

but the same was dismissed only on the ground that the petitioner has already availed ten effective opportunities to lead his evidence. Learned counsel further submits that the petitioner wanted to summon Patwari Halqa along with original record relating to the jamabandi for the year 1999-2000 of the concerned village to prove on record in whose name the jamabandi pertains. Learned counsel also submits that the summoning of concerned Patwari Halqa along with all original record to prove the jamabandi for the year 1999-2000 is necessary as in the revenue entry the name of Gurpreet Singh was recorded instead of Gurmeet Singh. It is also the argument of learned counsel that the said evidence was not in possession of the petitioner and same could not be produced inspite of all diligence on his part. Learned counsel for the petitioner has also relied upon the judgments of this Court in **Jai Narain Vs. Satya Narain and others** 2007 (4) Law Herald 3117 and **Ranjit Singh Vs. Mehfil Restaurant** 2008 (1) RCR (Civil) 768 in support of his contentions.

Learned counsel for the respondent has opposed the submissions made by learned counsel for the petitioner. He submits that the application moved by the petitioner for leading evidence in rebuttal was dismissed but the order was never challenged. The petitioner adopted clever tactics by moving another application for additional evidence. The respondent was always ready and willing to execute the sale deed in favour of the petitioner and remained present before the Sub Registrar on the date fixed i.e. 18.3.2005. An affidavit to this effect was also furnished by him before the Sub Registrar. It was the petitioner only who never reached to the office of Sub Registrar for execution and registration of sale deed. Learned counsel further submits that the petitioner while filing suit for

specific performance has categorically averred in para No.1 of the plaint that the respondent was owner in possession of the suit property. Learned counsel also submits that the ownership of the respondent was never in dispute before the trial Court. At the end, learned counsel for the respondent submits that contents of both the applications were the same and only by changing the headnote and prayer clause, subsequent application was moved for additional evidence. The applications were rightly dismissed and as such the present petition is also liable to be dismissed. Learned counsel for the respondent has also relied upon the judgment of Hon'ble the Apex Court in the case of **Karnataka Board of Wakf Vs. Government of India and others** 2004 (2) RCR (Civil) 702 and of this Court in the cases of **Krishan Kumar Vs. Manish Kumar** 2002 (3) RCR (Civil) 416, **Amrik Singh Vs. Jodh Singh** 1998 (3) RCR (Civil) 637, **Punjab Water Supply and Sewerage Board Vs. M/s Surindera and Company** 2002 (3) Civil Court Cases 53, **Hardev Singh and another Vs. Balwant Singh** 2004 (1) RCR 300, **Suraj Bhan Vs. Sohan Lal and another** 1991 (2) RRR 227, **Tejinder Kaur Vs. Kishan Singh and others** 2008 (1) RCR (Civil) 485, **Satnam Singh Vs. Devinder Kaur** 2006 (4) RCR (Civil) 639, **Jagir Chand Vs. Jagsir Singh** 1999 (4) RCR (Civil) 291, **Ajlaur Singh s. Jagtar Singh** 2001 (4) RCR (Civil) 292, **Shrimati Puran Devi @ Puro Vs. Smt. Harjit Kaur and another** 1976 RCR 840, **Buta Singh Vs. Gurmeet Singh** 1994 (2) RRR 623, **Kulwant Singh Vs. Makhan Singh** 1992 (2) RRR 422 and **Sant Partap Singh @ Surbirinder Singh Vs. Hari Singh and others** 2016 (3) Civil Court Cases 238, in support of his contentions.

Heard the arguments advanced by learned counsel for the

parties and have also gone through the impugned orders and other documents available on file.

The facts relating to filing of civil suit and moving of two applications i.e. application for summoning of Patwari Halqa and permission to lead additional evidence and dismissal thereof are not disputed.

Initially the petitioner moved an application to summon Patwari Halqa on the ground that testimony of Patwari Halqa is essential to clarify the mistake occurred in the fard jamabandi, wherein, name of respondent was wrongly mentioned as Gurpreet Singh instead of Gurmeet Singh. The application was opposed by the respondent on the ground that the application was not maintainable as the petitioner has already availed number of opportunities to lead his evidence and failed to examine the Patwari Halqa. Aforesaid application was dismissed on 3.5.2016 on the ground that the petitioner had already availed ten effective opportunities to lead his evidence. Another application was moved by the petitioner for permission to lead additional evidence by summoning Patwari Halqa for proving correctness of jamabandis on the Court file. It was mentioned in the application that the mistake has occurred in fard jamabandi wherein name of the respondent was wrongly entered as Gurpeet Singh instead of Gurmeet Singh. This application was also contested by the respondent by way of filing reply, wherein, it was mentioned that the application was not maintainable as the application filed earlier had already been dismissed.

Admittedly, the application for permission to lead evidence was moved when the suit was fixed for final arguments. The petitioner had already led evidence by producing jamabandi Ex. P-9 in the name of

Gurpreet Singh, which is on the Court file. In para No. 5 of the plaint, it was specifically stated by the petitioner-plaintiff that he came to know from Patwari Halqa with regard to the entry in the name of Gurpreet Singh in the revenue record after execution of sale deed in his favour. It clearly shows that this fact was in the knowledge of the petitioner-plaintiff and he was required to produce his entire evidence on this aspect in his affirmative evidence. The petitioner-plaintiff was very diligent about his case from the beginning. There is no requirement to produce the Patwari Halqa to prove the jamabandies as the same are maintained by Revenue Department. Initially the application for summoning Patwari Halqa was filed in rebuttal evidence and the same was dismissed on 3.5.2016. Thereafter second application for producing the same witness in additional evidence was moved, whereas, provisions under Order 18 Rule 17-A CPC have been omitted by the Code of Civil Procedure (Amendment) 1999 w.e.f. 1.7.2002. Moreover, the respondent-defendant has already produced copies of jamabandis of 10 years, wherein, name of Gurmeet Singh found incorporated. There is no need to produce Patwari Halqa as witness in additional evidence as the jamabandies itself are sufficient to prove the facts. The suit has been filed by the petitioner with regard to the dispute of ready and willingness to get the sale deed registered and there is no need to examine any witness. Nowhere it has been mentioned in the application by the petitioner that inspite of due diligence, he was not aware about the change of name in the revenue record. The application for additional evidence can be allowed in case the evidence could not be produced inspite of diligence at the time of recording of the testimony. It is mentioned in the application by the petitioner-plaintiff himself that he came to know about

change of name of respondent-defendant in the revenue record from the Patwari Halqa after execution of sale deed in his favour. It shows that the petitioner-plaintiff was well aware regarding the change of name of respondent-defendant in the revenue record. The ownership of the respondent was never in dispute before the trial Court. In case the respondent was not owner of the property in dispute, there was no occasion for the petitioner to file suit for specific performance and he could have get the FIR/criminal case registered against the respondent. Neither from the contents of the plaint nor of the application, it was the case of the petitioner that respondent was not owner of the suit property. It was the positive pleaded case of the petitioner in para No.1 of the plaint that respondent was owner of the suit property. There was no issue in dispute between the parties with regard to ownership of the respondent over the suit property. It is settled principle of law that evidence cannot be led in contradictory to the pleaded case. The additional evidence can only be permitted if the evidence is relevant for just decision of the case. After earlier application for rebuttal evidence was dismissed, the petitioner moved another application for additional evidence, which is misuse of process of law. The petitioner-plaintiff cannot be allowed to lead entire evidence afresh or to make statement on all the facts as the onus was upon the plaintiff himself to prove these facts. Moreover, the petitioner will have full opportunity to cross-examine the witness and the requirement of law is that the party under the garb of rebuttal evidence cannot be permitted to lead additional evidence. In **Tejinder Kaur's case (supra)**, it has been held that there is a difference between the rebuttal evidence and additional evidence and the procedure thereof. The additional evidence is with respect to the fact, which was not

within the knowledge earlier or which could not be known to the applicant inspite of due diligence, however, right to rebuttal is with respect to an issue which was already within the knowledge of the party and the party had reserved its right of rebuttal in that regard. The party cannot be permitted to lead evidence in rebuttal to fill up the lacunae in its evidence. Identical view was taken by this Court in **Hanumant Singh Vs Babu Singh and others** 2010 (2) Civil Court Cases 311 (P&H).

In view of facts and law position as explained above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

21.2.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes