

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

CR No.3570 of 2017.

Date of Decision: 17.05.2017.

Amarjot Singh

....Petitioner.

VERSUS

Gurdip Singh and others

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

SNEH PRASHAR, J.

Challenge in this petition is to the order dated 21.04.2017 passed by learned Civil Judge (Junior Division), Hoshiarpur by virtue of which the application filed by the petitioner-plaintiff under Section 151 of the Code of Civil Procedure for additional evidence was dismissed.

The submissions made by Mr. Kartik Gupta, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner argues that during his cross-examination, respondent-defendant Gurdip Singh denied that his father Bhagat Singh had given an application against him and in that application he was called by the police. Contrary to his own version, in his statement recorded during mutation proceedings before the Court of S.D.M.-cum-Executive Magistrate, Hoshiarpur on 30.08.2010, defendant Gurdip Singh had admitted the said factum. In said circumstances, the petitioner-plaintiff filed an application seeking permission to tender by way of additional

attesting witness to the will set up by Gurdip Singh made during mutation proceedings, for proper adjudication of the case. Learned trial court wrongly observing that the petitioner wants to cross-examine respondent Gurdip Singh by way of the application filed, has dismissed his application. In fact, copies of the statements of the said two witnesses are only to be tendered in evidence. Submitting that something, which remains obscure, should be filled and brought on record so as to enable Court to pronounce verdict in more satisfactory manner, learned counsel relies upon ***Gurdev Singh and others vs. Karnal Singh and others, 2016(1) PLR 264 and Sham Lal vs. Raj Kumar, 2012(57) R.C.R. (Civil) 210.***

The Hon'ble Supreme Court held in ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India, A.I.R. 2005 Supreme Court 3353***, that to do substantial justice the Court has inherent power to allow any material evidence to be led by the parties by way of additional evidence unless the application filed prima facie suffers from malafide and amounts to abuse of process of the Court. But if the evidence sought to be produced by way of additional evidence is found to be not relevant and is such which could have been produced by the applicant at the appropriate stage exercising due diligence, the prayer made for leading additional evidence has to be declined.

From the impugned order, it transpires that the case was fixed for rebuttal evidence, if any or for arguments when the instant application for adducing additional evidence was filed by the petitioner. Indeed, the prayer of the petitioner was to tender the statement of Gurdip Singh and of Surjit Singh recorded before the Court of S.D.M.-cum-Executive

order wrongly observed that through the instant application, the petitioner wants to cross-examine respondent-defendant Gurdip Singh, but in the lines following that observation, learned trial court itself observed that the petitioner only wants to place on record statement of Gurdip Singh. The application was not rejected by learned trial court for the reason that the petitioner wanted to cross examine respondent Gurdip Singh but for the reason that the documents/statements were in knowledge of the petitioner and he had failed to explain how despite exercise of due diligence he could not produce the same earlier during his evidence and also for the reason that the petitioner had failed to satisfy the Court how the documents were relevant at this stage.

It is the case of the petitioner that during his cross-examination respondent Gurdip Singh denied that his father Bhagat Singh had given an application against him in the police station. Cross-examination of the witness has been annexed (Annexure-P5) with the present petition. A perusal of the same shows that although a question with regard to an application given to the police by Shri Bhagat Singh against respondent Gurdip Singh was put to him which he denied, but no query/ suggestion with regard to any statement made by him before the Court of S.D.M.-cum-Executive Magistrate, Hoshiarpur was put to him. It was not even enquired from him whether his statement was recorded or not in any proceedings before the said Court. When, what to say of confronting the witness to the statement, if any, made by him earlier or even the factum of making a statement before a particular authority was not put to him, any such statement alleging to be of the witness will be of no relevancy at this stage.

the petitioner for additional evidence.

Otherwise also, the statement made during some proceedings before the Court of S.D.M.-cum-Executive Magistrate, Hoshiarpur were in knowledge of the petitioner. No reason, worth in its name, was mentioned in the application why despite exercise of due diligence the documents were not produced/ proved in evidence at the appropriate stage.

Thus, the order passed by learned trial Court suffers from no illegality, perversity or jurisdictional error warranting interference and the petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

17.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**