

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 11.08.2017****CR No.3813 of 2017 (O&M)**

Sukhdeep Singh

...Petitioner

Vs.

Mukhtiar Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Singla, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J.

This petition has been filed under Article 227 of the Constitution praying for setting aside the order dated 20.04.2017 passed by the Additional Civil Judge (Senior Division), Bathinda in a civil suit bearing File No.110 of 11.06.2012 titled 'Sukhdeep Singh Vs. Mukhtiar Kaur etc.' allowing the application moved by respondents No.1, 3, 4, 5 & 7 under Order 11 Rule 14 read with Section 151 CPC. The petitioner is the plaintiff in the suit.

A few words on the nature of the suit for the purpose of order is noticed. The present petitioner filed a suit for declaration to the effect that he is exclusive owner in possession of land measuring 6 Bigha 16 Biswas falling in Village Patti Jhutti, Bathinda, fully described in the head note to the plaint. A declaration was also sought that the defendants have got no right, title or concern whatsoever, with the suit property and the Tatima sale deed No.1223 dated 05.05.2011 showing change of Khasra No.3593 min(6-16) to Khasra No.3596 min(6-16) in sale deed No.7409 dated 30.12.2002 is illegal, null & void and ineffective and not binding on the rights of the

plaintiff and the same is a result of fraud, misrepresentation, impersonation etc. There are other prayers in the suit as well including for permanent injunction restraining defendants No.5 to 7 from alienating any portion of the suit property measuring 2 Bigha 7 Biswa.

Upon notice, in the written statement, defendants No.1, 3, 4, 5 & 7 objected to the suit stating that Surjit Singh Dhillon, father of the plaintiff/petitioner entered into an agreement to sell with defendants No.1 to 3 on 17.10.2002 for the sale of land measuring 6 Bigha 5 ½ Biswas in Khasra No.3596 and the boundaries shown in the agreement dated 17.10.2002 coincided with Khasra No.3596, but Surjit Singh Dhillon managed to get entered Khasra No.3593 instead of Khasra No.3596 of suit land situated within the revenue limits of Village Patti Jhutti, Bathinda in the sale deed and got it executed in favour of the plaintiff, his son. Besides, Surjit Singh Dhillon signed the sale deed on behalf of purchaser by presenting himself before the Scribe and the Sub Registrar, Bathinda. Therefore, there was a plea taken in the written statement that original agreement would be got produced from the plaintiff at the proper stage of the suit. No doubt, the photocopy of the said sale agreement was on the judicial file.

In the application under Order 11 Rule 14 read with Section 151 CPC and Section 66 of the Indian Evidence Act, the prayer on behalf of defendants No.1, 3, 4, 5 & 7 was that in his examination-in-chief, the plaintiff had tendered his affidavit and for his effective cross-examination, the said document was to be put to the plaintiff in original in the witness box since he as a vendee must have possession of his most precious document

which would have to be matched with the sale deed to know the difference in Kharsa numbers.

The Additional Civil Judge (Senior Division), Bathinda by his impugned order dated 20.04.2017 has allowed the application of defendants No.1, 3, 4, 5 & 7 and adjourned the case for production of the said documents. The Court has reasoned as follows:

“5. After considering his arguments, this court has perused the file and has come to the conclusion that the earlier application was moved by the plaintiff and that was disposed of by the court vide order dated 12.08.2013. The present application has been moved by defendant No.1, 3, 4, 5 & 7. Keeping in view of the pleadings of applicants, in their written statement, whereby they have specifically mentioned that the documents are in possession of the plaintiff, it cannot be treated as implication of principle of resjudicata. That order was passed on application of plaintiff and the present application has been moved by the defendants. Moreover, the written statement was filed prior to the passing of order dated 02.08.2013 as referred by Ld. Counsel for plaintiff. There is no change in the pleading of defendants. So it is to be treated as independent application. It is further clear that whenever any agreement is executed between the parties, it is the vendee who is in possession of the agreement to sell as here the vendee is plaintiff. So the document is presumed to be in his possession. Moreover, the plaintiff has not denied it. The copy of said agreement to sell has been filed. Let it has been placed on file. No prejudice is going to be caused by the plaintiff, if this application is allowed. Accordingly, direction is given to the plaintiff to produce the original documents, so that cross-examination of plaintiff may be conducted. However, if it is not proved by him then further order shall be passed regarding considering the copy of that agreement to sell by way of secondary evidence, if needed.”

Before this Court while challenging the order, learned counsel relies on the decision of this Court in The Tata Iron and Steel Co. Ltd. & others Vs. Prop. Ajit Cotton Ginning Pressing Dall & Steel Rolling Mills, 2013 (1) RCR (Civil) 506. That was a case involving an application demanding documents by production. Rules 14 & 15 of Order 11 CPC empower the Court to issue a direction to the party to produce the documents for inspection on or before the settlement of issues. The contention is that a Court on due application of mind must reach to a conclusion that the documents sought for production were relevant for determination of any controversy in the suit and there was willful disobedience on the other side by failure to produce documents applied for. I do not see how this ruling helps in a case where agreement to sell is directly in issue and appears to be the heart of the matter. The trial Court is not wrong when it says that there is a presumption that the original agreement to sell will be with the vendee as usually it is. The agreement to sell must go alongside the sale deed to know which land was proposed to be sold and what was actually bought. Matching both the documents has to be resorted to in search of truth.

In the presence of the photocopy of the agreement to sell dated 17.10.2002 placed in the written statement by the defendants in defence of the suit and followed up with an application under Order 11 Rule 14 CPC for production of the original, then it will be for the plaintiff/petitioner to take whatever defences he can take as per law. However, in case of non-production of the sale agreement, it will be open to the Court to draw such inferences as are available in the law of presumptions in the Evidence Act.

In the above facts and circumstances, I would, therefore, not interfere with the order passed by the trial Court as it causes no prejudice to

the petitioner and would dismiss the petition. In any case, the purpose of a trial is to reveal the truth and truth must triumph.

11.08.2017

Vimal

**[RAJIV NARAIN RAINA]
JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*