

C.R. No. 5478 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 5478 of 2016

DATE OF DECISION:18.01.2017

Jaipal

.....Petitioner

Versus

Hari Dass and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Yowan Sharma, Advocate
for the petitioner.

Mr. Pankaj Bali, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 6.8.2016 (Annexure P-5) passed by Additional Civil Judge (Senior Division), Kalka, whereby, application moved by the plaintiff-petitioner for leading additional evidence has been dismissed.

Briefly, the facts of the case are that the plaintiff-petitioner filed a suit for decree of possession by way of specific performance of the agreement to sell dated 13.5.2010 along with consequential relief of permanent injunction restraining the defendant-respondents from selling, mortgaging and alienating the land in dispute till the decision of the case.

Written statement to the suit was filed by the respondents and

agreement to sell was denied. As per version of the defendant-respondents, the signatures of defendant No.1 and thumb impression of deceased-Jai Pal were obtained on blank papers. The petitioner filed an application before the Court below seeking permission to adduce additional evidence by way of examination Sh. Shyam Lal, who was the scribe as well as witness to the agreement to sell. Reply of the application was filed and the same was dismissed vide order dated 6.8.2016 on the ground that applicant was having knowledge that Shyam Lal scribed the agreement to sell at the time of his evidence and as such he was required to lead his evidence at that time to prove his case. It was also held that the application was not filed with bona fide intention and filed just to fill up the lacunae of the case.

Learned counsel for the petitioner submits that inadvertently Shyam Lal has not been examined, whereas, he is material witness and no prejudice is going to be caused to the defendant-respondents. He also submits that the petitioner is also ready to compensate the other party in monetary terms.

Learned counsel for the respondents has opposed the submissions made by learned counsel for the petitioner. He submits that a specific stand was taken in the reply of the application as to why the scribe-Shyam Lal was not examined at the time of leading evidence by the petitioner when it was in his knowledge that he was a material witness to agreement to sell.

Heard the arguments advanced by learned counsel for the petitioner and have also perused the impugned order dated 6.8.2016.

A perusal of the impugned order would show that no reason or finding has been recorded while dismissing the application. The application

has been dismissed simply on the ground that the same has been filed just to fill up the lacunae, whereas, nowhere, it has been mentioned that as to how the other party is going to be prejudiced. There were two witnesses of the agreement to sell, namely, Shyam Lal and Davinder Kumar. Davinder Kumar has already been examined before the Court, whereas, Shyam Lal was not produced to prove the agreement to sell. Respondents have not raised any objection with regard to examination of witness to the agreement to sell or on the scribe of the agreement to sell. Davinder Kumar was examined and cross-examined and during cross examination Shyam Lal was specifically named. Said Shyam Lal is necessary witness in the case and he is required to be examined.

It is a settled principle of law that it is duty of the Court to come to a definite conclusion and to see whether the additional evidence to be adduced is necessary to reach to the right decision or not. The Court is having power to permit fresh evidence in case the evidence to be adduced by either of party is relevant for just decision of the case but there should be valid reasons for that. It was held by Hon'ble the Apex Court in the case of **K.K. Velusamy Vs. N. Palanisamy** 2011 (3) Recent Apex Judgments (R.A.J.) 83 that by recording valid reasons, appropriate cost can be awarded to the other party to compensate for the delay and in case the application is found to be mischievous or frivolous or to cover up negligence or lacunae, it should be rejected with heavy cost. If additional evidence is found to be non-genuine or irrelevant, exemplary cost be awarded apart from prosecution, if it involves fabrication of evidence.

Again in **K. Venkataramiah Vs. A. Seetharama Reddy & Ors.** AIR 1963 Supreme Court 1526 a Constitution Bench of Hon'ble the

Apex Court while reiterating the afore-noted observations in **Parsotim Thakur and others Vs. Lal Mohar Thakur and others** pointed out that the appellate court has the power to allow additional evidence not only if it requires such evidence 'to enable it to pronounce judgment' but also for 'any other substantial cause'. There may well be cases where even though the court finds that it is necessary to pronounce judgment as it is, and so, it cannot strictly say that it requires additional evidence 'to enable it to pronounce judgment', it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner.

In case the Court comes to the conclusion that additional documents are necessary for just decision of the case even before pronouncement of the judgment then also the additional evidence can be allowed by the Courts. In case by additional evidence, the Court is facilitated in arriving at just decision and production of some evidence it is likely to assist the Court in reaching to the just decision then it is to be allowed.

In view of the facts as mentioned above, the present petition is allowed and impugned order dated 6.8.2016 is hereby set aside. The trial Court is directed to allow the petitioner to examine Shyam Lal subject to payment of cost of ₹ 15000/- to be paid to the respondents.

January 18, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes