

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

**CR No.5854 of 2016.**

**Date of Decision: 24.01.2017.**

Mulakh Raj

...Petitioner.

**VERSUS**

Amar Singh and others

...Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. Parveen Sharma, Advocate for  
Mr. Arvind Singh, Advocate for the petitioner.

Mr. S.S. Dinarpur, Advocate for respondent No.1.

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**SNEH PRASHAR, J.**

The petitioner is aggrieved by the order dated 22.08.2016 passed by learned Additional Civil Judge (Senior Division), Kurukshetra by virtue of which two applications filed by him for additional evidence were dismissed.

The first application was filed by the petitioner seeking to summon Kuldeep Singh Virk, Retd. Kanungo for proving Aksh Shijra and site plan of the suit property and the second application was filed for tendering certified copy of judgment dated 02.07.2016 passed in criminal case pertaining to First Information Report No.55 dated 04.07.2013 under Sections 447 and 506 of the Indian Penal Code registered at Police Station

commissioner filed by the petitioner for collecting evidence with regard to the source of irrigation of the suit property was dismissed and the instant application had been filed to bring the same evidence on record, learned trial Court dismissed the application of the petitioner. As far as the second application was concerned, the document being certified copy of a judgment was allowed to be tendered in evidence.

There appears absolutely no illegality or perversity in the order of learned trial Court. The Aksh Shijra and the site plan of the suit property were the documents which were available with the petitioner and exercising due diligence could have been produced by him during his evidence. A retired Kanungo is not required to be examined to prove an Aksh Shijra or the site plan of the suit property. Learned trial Court observed that after having availed ten effective opportunities to produce his evidence the defendants had closed their evidence. Subsequent to that they had filed an application for appointment of local commissioner which was dismissed and it was thereafter that the instant application was filed.

No doubt, as held by Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, A.I.R. 2005 Supreme Court 3353**, 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. Otherwise also, 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.

Having availed much more than adequate opportunities to produce his evidence, the application for additional evidence filed by the petitioner to examine a retired Kanungo for proving an Aksh Shijra would amount to abuse of process of the Court.

Thus, there being no merit in the petition, it is hereby dismissed.

**(SNEH PRASHAR)**  
**JUDGE**

**24.01.2017.**  
*jitender sharma*

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

Whether Reportable : **Yes/ No**