

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

Civil Revision No.5680 of 2017(O&M)

Date of Decision: August 24 , 2017

Nasiru

...Petitioner

versus

Sada and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Sanjay Verma Advocate
for the petitioner.

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HARINDER SINGH SIDHU, J.

This revision petition has been filed impugning the order dated 24.07.2017 (Annexure P-3) passed by Ld. Additional District Judge, Yamuna Nagar at Jagadhri, whereby, the application under Order 41 Rule 27 of the Code of Civil Procedure, filed by the defendant-petitioner, has been dismissed.

Briefly, the facts are that the plaintiff-respondents filed a suit for permanent injunction for restraining the defendant-petitioner from dispossessing the plaintiffs from the land measuring 8K 14 M situated within the revenue estate of village Pilkhanwala, Tehsil Jagadhri Distt. Yamuna Nagar. The defence of the defendant-petitioner was that the suit land is part of *shamlat* land and the same vests in the proprietors of the village and that the defendant is also one of the proprietors of the village and is in actual physical possession of the same being proprietor and co-sharer. It was denied that the plaintiffs were proprietors and khewatdars of

the village and consequently they did not have any right, title or interest in the suit land. The plaintiff examined three PWs and closed his evidence. The defendant- petitioner however did not produce any evidence because of which vide order dated 20.10.2010 he was proceeded against ex parte. The said order was set aside on 6.8.2012, but again no witness was produced and vide order dated 16.2.2013 the evidence of the defendant was closed. On his failure to appear, he was again proceeded against ex parte vide order dated 14.03.2013. That order was set aside vide order dated 6.9.2013, whereafter, the defendant again did not appear and ultimately ex parte judgement was passed on 3.10.2013 and the suit was decreed.

The petitioner filed appeal before the Ld. District Judge Yamuna Nagar along with application under Order 41 Rule 27 CPC for placing on record order dated 30.08.2013 passed by the Ld. Assistant Collector 2nd Grade Bilaspur. The said order reads thus:.

“Record presented and same was perused and spot inspection of khasra no.41//5 was situated in mauja Pilakhanwala was done by me and wherein on the spot possession of Nasiru s/o Namdar was found and on the spot applicant sown the kharif crop on the land in question but the khasra no.41//5 is owned by shamlat deh and dispute qua ownership is subjudice in case titled as “Jai Singh and others vs. State of Haryana and others”, so till the decision of above said case the present case is ordered to be sine-die and copy of the order is consigned to record room”

The application having been dismissed vide order dated 24.07.2017, the petitioner has filed the present petition.

Court failed to appreciate that the document sought to be produced was relevant to the decision of the real controversy in the suit. In the suit, the respondents have claimed to be in possession of the property on the basis of jamabandi and Khasra Girdawaris. The petitioner had challenged those Jamabandis and Girdawaris and the factum of the possession was verified by the Revenue authorities which fact was recorded in the order of the Assistant Collector 2nd Grade which was sought to be placed on record. Even otherwise, the document is a public document, the authenticity, whereof, cannot be disputed.

I have heard Ld. Counsel for the petitioner and have gone through the impugned order.

The Ld. appellate Court has noted that the dispute in the case was regarding possession over the property in dispute. The plaintiff -respondents examined three witnesses and closed their evidence. The defendant - petitioner, however, did not produce any evidence because of which vide order dated 20.10.2010 he was proceeded against ex parte. The said order was set aside on 6.8.2012, but again, no witness was produced and vide order dated 16.2.2013 the evidence of the defendant was closed. On his failure to appear, the petitioner was again proceeded against ex parte vide order dated 14.03.2013. That order was also set aside vide order dated 6.9.2013. Thereafter, the defendant again did not appear and ex parte judgement was passed on 3.10.2013 and the suit was decreed.

The order now sought to be placed on record dated 30.08.2013 was available before passing of the judgment by the Trial Court on 03.10.2013, but the petitioner did not make any request to the Court to take

that evidence on record.

Further, the order sought to be placed on record only records the proceedings before the Assistant Collector 2nd Grade Bilaspur on 30.08.2013 . The case was adjourned sine die to await the decision in `Jai Singh and others vs. State of Haryana and ors.'. The order does not prove possession of the petitioner. The revenue officers did not record the statements of the persons corroborating that the defendant-petitioner was in possession of the land in dispute. Therefore, the mere recital in the order was not of itself sufficient to prove possession of the defendant- petitioner.

The Ld. Appellate Court has given sound and valid reasons for dismissing the application of the petitioner. I find no illegality or infirmity in the order warranting interference.

Consequently, this revision petition is dismissed.

August 24 , 2017

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(HARINDER SINGH SIDHU)
JUDGE

<i>Whether speaking/ reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>