

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

C.R. No. 6174 of 2016 (O&M)

Date of Decision:- 14.02.2017

Nihala (deceased) through LRs

...Petitioners

vs.

Irshad

...Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. P.R. Yadav, Advocate,
for the petitioners.

Mr. Pankaj Jain, Advocate,
for the respondent.

DAYA CHAUDHARY, J.

C.M. No. 19804-CII of 2016

This application is for placing on record judgment and decree dated 15.6.2010 (Annexure P-9).

Application is allowed. Annexure P-9 with the application is taken on record.

C.R. No. 6174 of 2016

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 29.7.2016 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Mewat whereby the application moved by the petitioner for leading additional evidence and order dated 29.7.2016 (Annexure P-8)

whereby the application for summoning the Patwari of village Balhad, Tehsil Nuh, District Mewat along with original register of Khasra Girdawari for the period Kharif 1983 to Rabi 1988 have been dismissed.

The petitioners are the legal representatives of defendant-Nihala, who expired on 19.6.2014 during pendency of the proceedings, who were brought on record vide order dated 10.10.2014.

Petitioners are aggrieved with the order passed while dismissing their application for leading additional evidence in order to place on record certified copies of Jamabandis, which were stated to be received by them just before filing of the application for additional evidence. As per case of the petitioners, said jamabandis were obtained by the plaintiff himself in the year 2004 and the same were placed on record in the earlier suit titled as Irshad vs. Sheru etc and the same were not in the knowledge of the petitioners earlier. The entries in favour of the defendant came into the notice of the petitioners just 15 days before filing of the suit i.e. on 3.9.2010. However, the application moved by the petitioners to adduce additional evidence by contending the same to be necessary for just decision of the case to reach at a right decision was dismissed by the learned Civil Judge, Mewat vide order dated 29.7.2016, which is the subject matter of challenge in the present petition.

The said impugned order has been challenged on the ground that the documents which are sought to be adduced by the petitioners are the documents exhibited in an earlier suit, which was decided and as such, the same are *per se* admissible but still, application has been dismissed.

Moreover, rebuttal evidence is yet to be led by the plaintiff and in case these

documents are ordered to be tendered in evidence, the respondent-plaintiff can very well rebut the same, if required. Second application filed by the petitioner for summoning village Patwari for comparison of the original record of Khasra Girdawari as there was difference in the entries in Exhibits P-2 and D-9 but the same was also dismissed vide order dated 29.7.2016 which has also been challenged in the present revision petition.

Learned counsel for the petitioners submits that comparison of the documents requires deeper insight and this fact came to his notice when the case was being prepared. Learned counsel also submits that the additional evidence can be led at any stage of the trial.

Learned counsel for the respondent submits that a detailed order has been passed in both the applications that documents mentioned in the application are not essential for just decision of the case, especially when the petitioners have availed number of opportunities and their evidence was also closed by their counsel after leading evidence. All these documents were in the notice and knowledge of the petitioner-defendants and the same could have been produced at the time of leading evidence in case the same were so necessary. Learned counsel for respondent also submits that the Patwari is sought to be summoned for comparison of two documents tendered by plaintiff himself. The petitioners were given more than eight opportunities to adduce their evidence during interregnum but no such objection was ever raised. Even the petitioners have failed to explain as to why such an objection was not raised by them when alleged documents were tendered by them.

Heard arguments of learned counsel for the parties and have

also perused the impugned orders and other documents available on the file.

Filing of suit and moving of two applications for leading additional evidence and summoning of Patwari of the village and dismissal thereof by the trial Court are not disputed.

Undisputedly, the Court has the power to allow additional evidence in case the same is required to enable the Court to reach to the right conclusion or the same is necessary for pronouncement of the judgment in a more satisfactory manner. Order 6 Rule 17 of CPC postulates amendment of pleadings at any stage of the proceedings but the amendment is to be allowed by the Court subject to satisfying two conditions i.e.

- (i) of not doing injustice to the other side; and
- (ii) of being necessary for the purpose of determining the real questions in the controversy between the parties. Amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct but the amendment would cause an injury which cannot be compensated in costs. The Court has 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'. It has been held in various judgments of this Court as well as of Hon'ble the Apex Court that it is necessary to give reasonable opportunity to the party to produce relevant material on record in case said documents are relevant for pronouncement of a judgment in a just and appropriate manner and also for substantial cause. It is also

necessary to be considered whether such evidence would facilitate the Court in arriving at just decision. The only requirement to be seen is whether such an evidence proposed to be adduced is going to facilitate the Court to pronounce the judgment in an effective manner. This Court has observed in case **Basant Raj vs. Kaushal Kishore**, 2005 (2) HRR 546, which is as under:-

“4. After hearing the learned counsel for the parties and considering their rival submissions, I am of the view that no case is made out for interference in the impugned order exercising jurisdiction of this Court under Article 227 of the Constitution. A perusal of the impugned order shows that the Court itself has felt the necessity of adducing of additional evidence because it would be helpful in bringing on record a clear picture. Once, such an opinion has been expressed by the Court, then the power to permit additional evidence can be traced to Rule 18 Order 2 Explanation 1 as has been added by the local amendment applicable to Punjab and Haryana. The aforementioned Explanation 1 is reproduced hereunder for facility reference:-

“Explanation 1-Nothing in this rule shall affect the jurisdiction of the Court, of its own accord or on the application of any party for reasons to be recorded in writing, to direct any party to examine any witness at

any stage.

Explanation II- the expression witness in Explanation I shall include any party as his own witness (1.11.1996) ”.

5. *It is, thus, obvious that there is ample power with the Court to permit adducing of the additional evidence either on its own accord or on an application of any of the parties subject to the condition that good reasons are required to be recorded. A perusal of the impugned order shows that valid reasons have been recorded for passing the impugned order for adducing of additional evidence, including that it would be found to be helpful in bringing on record the clear picture and the same is necessary for expeditious disposal of the case. Even otherwise, the defendant-petitioner is unlikely to suffer any prejudice which is the basic condition for exercising the jurisdiction under Article 227 of the Constitution. The Supreme Court in **Ouseph Mathai vs. M. Abdul Khadri 2002 (1) SCC 379** has taken the view that this Court is to exercise jurisdiction in case of manifest injustice. No such manifest in justice is shown.”*

The Apex Court in catena of cases has observed that while interpreting the provisions of the Code, care should be taken that substantial justice is not sacrificed for hypertechnical pleas based on strict adherence to procedural provision. In this context, it will be fruitful to refer to the observations made by the Apex Court in the case of **Ghanshyam Dass and**

Ors vs. Dominion of India and Ors., reported in (1984) 3 SCC 46. In this case, the Apex Court was required to answer the question as to whether the notice which was given by the plaintiff's father before his death under section 80 of the Civil Procedure Code, 1908 would enure for the benefit of the plaintiff. While considering the said question, the Apex Court has made the following observations in para 17 and 18 of its judgment, which read as under:-

"17. Section 80 of the Code is but a part of the Procedure Code passed to provide the regulation and machinery, by means of which the courts may do justice between the parties. It is therefore merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it. **In Sangram Singh v. Election Tribunal Kotah** [1955 2 SCR 1 : AIR 1955 SC 425], Vivian Bose, J. in his illuminating language dealing with **the Code** of Civil Procedure said :

It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

"18. Our laws of procedure are based on the principle that "as far as possible, no proceeding in a court of law should be allowed to be defeated on mere technicalities". Here, all the requirements of [Section 80](#) of the Code were fulfilled. Before the suit was brought, the Dominion of India received a notice of claim from Seth Lachman Dass. The whole object of serving a notice under [Section 80](#) is to give the Government sufficient warning of the case which is going to be instituted against it (sic so) that the Government, if it so wished, (sic can) settle the claim without litigation or afford restitution without recourse to a court of law. That requirement of [Section 80](#) was clearly fulfilled in the facts and circumstances of the present case."

Similarly, the Apex Court in the case of **Billa Jagan Mohan Reddy and anr. v. Billa Sanjeev Reddy and ors., reported in (1994) 4 SCC 659** was called upon to consider the question of delay in producing the documentary evidence before the Court. The observations made by the Apex Court in paragraph 4 of the said judgment are relevant and which read as under:-

"4. Order 13 Rule 1 provides thus :

"1. Documentary evidence to be produced at or before the settlement of issues.-

(1) The parties or their pleaders shall produce, at or before the settlement of issues, all the documentary

evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced :

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs."

In the present case, it has been mentioned in the application that the judgment passed in the earlier suit was in the knowledge of the petitioners but the documents referred to in said judgment were not in their knowledge. The documents were obtained by the plaintiff himself in the year 2004. It came to the knowledge of the petitioner later on and it is only thereafter the application for additional evidence was moved. Said documents are the certified copies of the documents exhibited in the earlier suit which was decided and as such, they are *per se* admissible in evidence. Moreover, such documents can be tendered at any stage of the trial. These documents falsifies the stand taken by respondent-plaintiff and moreover, rebuttal evidence is yet to be led by the plaintiff. In case, these documents are ordered to be tendered in evidence, the plaintiff can very well rebut the same, if required. Though learned counsel for the respondents has opposed the submissions made by learned counsel for the petitioners but it has not been pointed out as to how the other party is going to be prejudiced.

Accordingly, in view of facts and law position as discussed above, the present revision petition is hereby allowed and impugned order dated 29.7.2016 dismissing application of the petitioner for additional

evidence and order of even date dismissing application for summoning the Patwari, passed by the Civil Judge, (Junior Division), Mewat, are hereby set aside. The trial Court is directed to give one effective opportunity to lead additional evidence subject to payment of costs of ₹ 10,000/- to be paid to the party opposite. However, the respondent-plaintiff is at liberty to rebut the additional evidence in case it is required.

February 14, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes