

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

CR No. 6318 of 2017(O&M)

Date of decision: 18.9.2017

Amar Singh

....Petitioner

VERSUS

Gyarsi Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Manish Mehta, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against orders dated 30.08.2017 and 06.09.2017 passed by the Civil Judge (Junior Division), Narnaul whereby application of the respondents/defendants for additional evidence has been allowed and the respondents despite being given one opportunity to adduce additional evidence vide order dated 30.08.2017 have been allowed another opportunity for 11.09.2017.

Counsel for the petitioner (one of the plaintiffs) has submitted that as the respondents/defendants had knowledge of the documents sought to be produced by way of additional evidence, no such contention of the respondents can be accepted that despite exercise of due diligence, they could not produce and prove the documents sought to be produced by way of additional evidence. Another submission made by counsel is that vide order dated 30.08.2017, additional evidence was allowed subject to costs of Rs.500/- and one opportunity for the purpose but still the respondents have been allowed another opportunity to adduce additional evidence vide order dated 06.09.2017 (Annexure P-4).

I have heard counsel for the petitioner, perused the paper-book particularly the orders impugned.

Perusal of the order dated 30.08.2017 would indicate that there is dispute between the parties in regard to exchange of land between predecessors of the plaintiffs and that of the defendants. The respondents have contested suit of the plaintiffs by raising a plea that Nanad, predecessor-in-interest of the plaintiffs was not owner in possession of the land stated to be given in exchange by him as he had already transferred land bearing khasra No.11//1 (8-0), 2(8-0), 10(8-0), 11(8-0), 9 (8-0), 12(8-0) vide registered Tamliknama bearing deed No.1205 dated 24.09.1969 in favour of his wife in regard whereof report vide rapat roznamcha No.115 at the behest of Nanad was lodged and mutation No.407 dated 02.01.1970 was sanctioned. The respondents sought to rely upon revenue documents like mutation and jamabandi to contest claim of the plaintiffs, to be produced by way of additional evidence.

The question of adducing additional evidence arises only if a party has failed to adduce that evidence at an appropriate stage of the proceedings. Counsel for the petitioner has not raised a plea that the documents to be produced/proved in additional evidence are either not relevant or material for complete and effective adjudication of the matter in controversy nor has challenged their authenticity and credibility. As per the settled position in law, additional evidence can be allowed at any stage of the proceedings if the evidence is otherwise relevant for just decision of the case. Equally true is that technicalities cannot be allowed to stand in the way of substantial justice. That being so, I do not find any reason to interfere in the judicial discretion exercised by the trial Court when

otherwise the order passed by the trial Court does not suffer from illegality much less being absurd or perverse.

So far as the plea that the case was adjourned on 06.09.2017 to 11.09.2017 despite the respondents/defendants having been given one opportunity to adduce additional evidence on 30.08.2017, counsel for the respondents/defendants made a request that his brief has been misplaced rendering him unable to tender documents in evidence. It is difficult to accept contention of the petitioner that a party should be made to suffer because of his counsel having been rendered handicap to tender documents in evidence as his brief had been misplaced. In this view of the matter, order dated 06.09.2017 cannot be faulted with.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to either of the parties at the time of final disposal of the suit.

SEPTEMBER 18, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no