

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

CR No. 665 of 2017 (O&M)
DECIDED ON: FEBRUARY 27, 2017

SOHAN LAL

.....PETITIONER

VERSUS

NARMAIL SINGH & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. D.S. Gurna, Advocate
for the petitioner.

Mr. Sanjeev Gupta, Advocate
for respondent No.2/caveator.

JASPAL SINGH, J

CM No. 2032-CII of 2017

Application is allowed, as prayed for.

CR No. 665 of 2017

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated January 12, 2017 passed by learned Additional Civil Judge (Sr. Division), Derabassi, whereby, an application filed by the petitioner/plaintiff seeking permission to lead additional evidence by way of examination of Bittu

Commission Agent and Kala Member Panchyat; has been dismissed.

While assailing the impugned order it has been argued with vehemence by learned counsel for the petitioner that learned trial Court has wrongly and illegally dismissed the application seeking permission to lead additional evidence by way of examination of Bittu Commission Agent as well as Member Panchayat, Punsar namely Kala on the premise that all the relevant witnesses have already been examined by the petitioner/plaintiff. The learned trial Court has failed to appreciate that point of determination in the present suit is execution of sale deed dated October 04, 2013 as well as the alleged consideration therein. In fact, during the cross-examination of DW-1 i.e. Nirmail Singh it has emerged that the sale consideration to the tune of ₹2,00,000/- was paid to the petitioner/plaintiff on October 04, 2013 i.e. the date of registration of sale deed and the said amount was arranged by respondent No.2-DW-1 from Bittu Commission Agent on October 02, 2013. Moreover, there are two attesting witnesses of the sale deed. Witness No.1 has thumb marked on the sale deed and his name has been mentioned as Kala Panch Punsar with no parentage etc and witness No.2 is Bahadur Singh son of Gurcharan Singh resident of Village Kheri Jattan. Since pleadings revolved around the non-payment of the alleged sale consideration i.e. ₹2,00,000/- by respondent No.1 to the petitioner, thus, the examination of afore-said witnesses is essential for the just and proper adjudication of the matter in controversy and due to the dismissal of application seeking permission to lead additional evidence by learned trial Court, a great prejudice is caused to the petitioner/plaintiff. Thus, the impugned order is not sustainable in the eyes of law and deserves to be set aside.

On the other hand, learned counsel for caveator/respondent No.2 has supported the impugned order submitting that the same is absolutely in consonance with the settled legal proposition of law. The parties have already led their evidence in respect of their respective pleadings and an application for additional evidence has been moved at a belated stage. Otherwise also, by mere examination and cross-examination of respondent No.1-DW-1 as witness does not give rise to the petitioner to move an application for additional evidence just to fill up the lacunae left in his case. Accordingly, he prayed for the dismissal of instant petition.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned order, this court finds that the same is perfectly in consonance with the legal proposition and does not call for any interference by this Court. "**Order XVIII Rule 17CPC** is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. In such a situation, the Court may call or recall the witnesses either on its own motion or on application by any of the parties. In the case in hand, the main controversy is only with regard to the execution of sale deed dated October 04, 2013, which is under challenge. Petitioner/plaintiff has already appeared in the witness box as PW-1 and has also been subjected to cross-examination by the opposite party. It would not be desirable to reflect his cross-examination at this stage, which otherwise clinches the matter. The examination of either Bittu Commission Agent or of Kala Member Panchayat, Punsar in the considered opinion of this Court is not at all relevant and the matter in controversy can be adjudicated upon effectively or judiciously on the basis of evidence available on file.

Thus, this Court is of the considered view that learned trial Court has rightly declined the application moved by the petitioner/plaintiff, which otherwise does not call for any interference by this Court.

In the light of what has been discussed above the net result is that the instant petition is without any merits and the same is dismissed whereby, the impugned order is confirmed.

FEBRUARY 27, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>