

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

CR No.7166 of 2017(O&M)

Date of decision: 1.11.2017

Jasbir Singh

.....Petitioner

VERSUS

Sukhdev and others

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Surender Dhull, Advocate for the petitioners.

REKHA MITTAL, J.

CM No.22991-CII of 2017

Heard.

Allowed as prayed for.

Annexure P-1 to P-3 are taken on record subject to just exceptions.

Disposed of accordingly.

CR No.7166 of 2017

Challenge in the present petition has been directed against order dated 27.07.2017 passed by the District Judge, Kaithal whereby application filed by the petitioner for permission to adduce additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (in short 'the Code') has been dismissed.

Counsel for the petitioner has submitted that respondent-Sukhdev has filed a suit to challenge release deed No.2165 of 13.09.2013 on the premise that the same is collusive, without legal necessity and consideration. It has been averred that since land in the hands of Jai Karan

is joint Hindu family ancestral property, Jai Karan being the karta is not competent to execute the release deed.

The petitioner/defendant filed the written statement traversing the allegations that the land in question is the Joint Hindu Family Co-parcenary Property in the hands of Jai Karan or he was not competent to execute the release deed. The suit filed by the respondents/plaintiffs was decreed vide judgment and decree dated 15.05.2015 whereby suit land has been held to be Joint Hindu Family Co-parcenary Property in the hands of Jai Karan.

The petitioner (defendant No.2) filed the appeal against the judgment and decree dated 15.05.2015 before the Court of District Judge, Kaithal and the same is pending adjudication. During pendency of appeal, he filed the instant application for leading additional evidence i.e. Jamabandi for the year 1959-60 and mutation No.1652 regarding property in dispute as 1/3rd share was owned and possessed by Smt. Godawari who inherited the same from her husband Jug Lal, therefore, the suit property was not inherited from a common ancestor through male line. It is argued with vehemence that as the documents in question cannot be fabricated by the petitioner and is a part of record of rights maintained by the revenue authorities, the appellate Court should have permitted the petitioner to produce these documents which are material to decide the issue with regard to nature of suit property.

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

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to take note of the observations recorded by the Appellate Court negating plea of the petitioner for producing additional

evidence. The Appellate Court by taking into consideration judgments of Hon'ble the Supreme Court **Mahavir Singh and others Vs. Naresh Chander and another, 2001 (2) Civil Court Cases 708** and **K.R Mohan Reddy Vs. M/s Network Inc. Rep Tr. M.D. 2007(4) Latest Judicial Reports 63** has held in the concluding para, quoted thus:-

"There is hardly any case made out for reopening the case afresh by allowing the evidence sought to be produced at this stage. There is hardly any case made out to show that the evidence sought to be produced at this stage eluded the applicant at the time of leading the evidence in the learned lower Court despite the exercise of due diligence. It appears to be a crude attempt on the part of the applicant to undo the findings recorded by the learned trial Court. Perusal of lower Court record reveals that these documents were not produced by the applicant/appellant before learned lower Court despite availing of eight effective opportunities for leading evidence of the applicant. These documents were even not produced before learned lower Court notwithstanding the fact that an application was filed by the applicant for additional evidence and the same was allowed vide order dated 8.5.2015. Having regard to the totality of the facts and circumstances of the case, the application under discussion warrants dismissal. Consequently, same is hereby dismissed."

Counsel for the respondents before the Court below raised an argument that ancestral nature of the suit property was determined between the parties in the earlier litigation that has already attained finality, therefore, the same can not be reopened in the present litigation, being barred by the principle of res-judicata. Another submission made by counsel is that stand taken in the application about property coming through Smt. Godawari was not pleaded in the written statement, therefore, any such permission, would amount to leading evidence beyond pleadings. The third argument made by counsel is that application for additional evidence was filed before the trial Court before the arguments i.e. on 02.05.2015 which was allowed on 08.05.2015.

Counsel for the petitioner has not disputed that the land in question was also the subject matter of his titled Sukhdev and others Vs. Jai Karan and others and the question in the said suit was with regard to land being Joint Hindu Family Co-parcenary Property and the same was answered in favour of the plaintiffs therein and the findings in this regard have attained finality. It is not plea of the petitioner that he was not a party to the earlier suit titled Sukhdev and others Vs. Jai Karan and others. Under the circumstances, once the question of nature of suit land already stands settled in the earlier suit, it may not be possible for the petitioner to re-agitate the issue because of the bar created under Section 11 of the Code.

This apart, the petitioner has not placed on record the application under Order 41 Rule 27 of the Code. The Appellate Court, in the opening para of the impugned order, has noticed that counsel for the petitioner argued that inadvertently applicant could not produce copy of Jamabandi and mutation No.1652.

Order 41 Rule 27 of the Code envisages three situations for adducing additional evidence. A relevant extract from Rule 27 reads as follows:-

"27.Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any

other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.”

Counsel for the petitioner is not in a position to advance any arguments much less meaningful to satisfy this Court as to under which clause of Rule 27, application filed by the petitioner is covered, to entitle the petitioner to adduce additional evidence in Appellate Court. Inadvertence to produce evidence, in no terms, can be covered within the purview and ambit of sub-Clause (aa) providing for failure to produce evidence despite exercise of due diligence or the same being not within or could be within knowledge of the petitioner after exercise of due diligence. The present application certainly does not fall within the purview of clause (b) in view of the discussion made hereinbefore that the question of suit property being Joint Hindu Family Co-parcenary Property was adjudicated upon in the earlier litigation that has attained finality between the parties. Analysed from any angle, I do not find any patent error much less illegality in the impugned order warranting intervention in exercise of supervisory jurisdiction by this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. Nothing stated hereinbefore shall cause prejudice to any party at the time of decision of appeal.

NOVEMBER 1, 2017
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no