

**In the High Court of Punjab and Haryana at Chandigarh**

**Civil Revision No. 7257 of 2017 (O&M)**

**Date of Decision: 16.11.2017**

R.V.Mehta

.....Petitioner

Versus

Subramanian and another

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Parshotam Lal Singla, Advocate  
for the petitioner.

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**ANITA CHAUDHRY, J**

This petition has been filed under Article 227 of the Constitution of India assailing the order dated 3.10.2017 (Annexure P-7) vide which the applications filed by the plaintiff under Section 151 CPC to file the rejoinder and lead additional evidence at the rebuttal stage, had been dismissed.

The petitioner was asked to place on record the statement made by the plaintiff as well as the zimni orders. Those documents have been placed on record and are taken on record.

The plaintiff filed a suit seeking possession of a portion measuring 6.78 *marlas* out of the total land measuring 3 *kanals* 404 square yards of plot No. 4 fully detailed in the plaint. The case of the plaintiff was that he was the owner of plot No. 4 and the defendants were in illegal and unauthorized possession of the portion since April 2012 and had failed to hand over the possession and he was entitled to the possession of the property and mesne profits @ Rs. 3,000/- per month.

The defendants filed the written statement and pleaded that the

plaintiff had failed to attach the proper site plan and the suit was vexatious and barred by limitation and it was a case of suppression of material facts. It was pleaded that the plaintiff had appointed Suman Kumar Walia as his general attorney vide document dated 28.4.1995. They had purchased the suit property from Suman Kumar Walia in the year 2000 vide a registered sale deed and this fact had been intentionally withheld and it amounted to concealment of material fact.

No rejoinder was filed by the plaintiff nor the allegations were controverted and the plaintiff led his evidence and the plea set up by him in the plaint was set out in the affidavit filed by him. He was subjected to a lengthy cross-examination where he admitted that he had appointed Suman Kumar Walia as his attorney but he gave some explanation which we need not refer here. After the defendants had closed their evidence, the case was fixed for rebuttal evidence when it was brought to the notice of the Court that an application had been filed by the plaintiff under Section 151 CPC. The date of the filing of the application is not referred.

The prayer made by the plaintiff was that he was under a *bona fide* belief that he had filed the replication to rebut the contents of the plea taken in the written statement but on recent inspection of the file it came to his notice that inadvertently replication had not been filed and he had left a “big lacuna” and he may be permitted to place the replication on record. A separate application was moved for permission to lead additional evidence and the plaintiff wanted to produce the judgments and the decrees, the site plan and the statement made by Suman Kumar in the earlier litigation between him and Suman Kumar. It was mentioned that Suman Kumar had filed a suit for specific performance relating to the disputed sale deed and

the said suit was dismissed and the attorney was not competent and the sale deed was a nullity.

The lower Court decided both the applications vide a common order and dismissed both the prayers and observed as under:-

*“Perusal of the case file shows that the plaintiff has filed the present suit for possession of the suit property. By moving the present application the defendant wants to lead evidence that Suman Kumar Walia was not competent person as the suit for specific performance of land out of which the disputed sale deed has been executed, of Suman Kumar Walia was dismissed and the sale deed of the defendants is nullity in the eyes of law. It is relevant to mention here that during the cross-examination of PW1 RV Mehta, he admitted that he had appointed Suman Kumar Walia as his general power of attorney vide document No. 882 dated 28.4.1995. Now, by moving the present application the applicant/plaintiff wants to prove that the alleged attorney was not competent. So, the applicant/plaintiff cannot be allowed to take two stands with regard to the same general power of attorney. It is further relevant to mention here that the alleged power of attorney was not challenged by the plaintiff. Moreover, it is a well settled law that the parties cannot allow to give evidence beyond their pleadings. Moreover the present application was filed at the stage when the case was fixed for arguments. It is worth mention here that no new fact or subsequent event happened which was not in the knowledge of the defendant at the time of leading evidence. No plausible reason was explained by the applicant for not giving the above said evidence as mentioned in the application during the proceedings when the case was fixed for defendant evidence. In case titled as Mukesh Gulati vs. Suraj Parkash Chouhan and others 2016(1) CCC 483 wherein it has been held that “additional evidence at the stage of final arguments- a party*

*cannot be allowed to fill up lacuna by leading additional evidence including by failing to cross examine witness of the other side, when the case is at the stage of final argument without giving any plausible reasons and further it has been held that from the stage of filing written statement the defendant knew about the evidence he was required to lead to prove his defence. Application rightly rejected.” In view of the above discussion, the applicant/defendant cannot be allowed to fill up lacuna at the stages of argument by leading additional evidence and the present application in hand is hereby dismissed. Now come upon 10.10.2017 for advancing arguments on the main case.”*

I have heard the submissions made by the counsel for the petitioner.

In the plaint the plaintiff did not disclose that he had sold any property or that he had given any GPA. Even after the issue was raised by the defendants in the written statement the plaintiff did not file the rejoinder. In the affidavit submitted by way of evidence the statement of the plaintiff was silent but in the cross-examination he admitted that he had executed a power of attorney in favour of Suman Kumar but now he wants to completely change the plea and wants to raise a new plea and make out a new case deviating from the earlier position. The trial Court has rightly declined the opportunity to the plaintiff to file the rejoinder at the rebuttal stage or for leading additional evidence. There is no infirmity in the order.

The petition is dismissed in limine.

**(ANITA CHAUDHRY)**  
**JUDGE**

**November 16, 2017**  
**Gurpreet**

**Whether speaking/reasoned : Yes**  
**Whether reportable : No**