In the High Court of Punjab and Haryana at Chandigarh

C.R.No.7729 of 2016(O&M)
Date of Decision: 31.8.2017

Harish Kumar Rao

---Petitioner

versus

Ruma Devi and others

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Mani Ram Verma, Advocate
for the petitioner

Mr. Parmod Parmar, Advocate,
for respondent Nos. 1 and 2

***

Rekha Mittal, J.

CM No.17709-CII of 2017

Heard.

Allowed as prayed for. Annexures P-3 and P-4 are taken on record subject to just exceptions.

Main case

The present petition directs challenge against order dated 1.11.2016 whereby application of the petitioner for leading additional evidence has been dismissed by the trial court.

The petitioner has filed a suit for declaration that transfer of house, detailed in head note of the plaint by defendant No. 3 in favour of defendant Nos. 1 and 2 vide sale deed No. 2909 dated 11.11.2009 is illegal, null and void, without consideration and result of collusion of the defendants to defeat right of the plaintiff and direction to defendant No.3 to get executed sale deed in his favour on the basis of agreement to sell dated 4.12.2007 executed by defendant No. 3 through her general power of attorney Sh. Om Parkash Rao.

The parties adduced evidence in support of their respective claims and the case was pending for evidence in rebuttal since 15.7.2016. The instant application was filed by the petitioner on 7.9.2016 to permit the petitioner to examine as many as four witnesses namely Krishan Kumar Rao, Kuldip son of Rajinder, Mohinder Singh, Advocate Notary Public, Manoj Kumar Yadav Advocate to prove the original agreement of sale dated 4.12.2007 which was earlier marked as P-2 on 14.8.2015.

After reply to the application was filed by the respondents/defendants and having heard counsel for the parties, the trial court dismissed the application for the reasons recorded in paras 4 and 5 of the order impugned, extracted hereinbelow for ready reference:-

> “4. The present case is very old one pertaining to the year 2012. The issues were framed vide order dated 23.9.2014. On 18.10.2014, 15.12.2014, 11.3.2015, 1.5.2015, 25.5.2015, 10.7.2015, 30.7.2015, the case was fixed for plaintiff evidence. Thereafter, on 14.8.2015, the plaintiff closed his evidence. The defendants evidence was closed vide order dated 11.7.2016. thereafter, case was adjourned to 15.7.2016, 27.7.2016, 12.8.2016 for rebuttal evidence. Now, the plaintiff has filed the present application on 7.9.2016 at the stage of rebuttal evidence.

5. The present suit was filed on 9.11.2012. The plaintiff has filed suit inter-alia on the basis of agreement dated 4.12.2007. Photocopy of said agreement is also placed on record. As such, the said agreement and proposed evidence are very much in the knowledge of plaintiff since date of filing this suit. The examination of proposed witnesses will amount to de-novo trial which may be abuse of the process of the Court. The plaintiff has placed on record photocopy of the said agreement, however, the plaintiff has never sought any permission to lead secondary evidence. Both the parties have led their evidence, the present application is filed at belated stage of rebuttal evidence despite knowledge. The plaintiff has been negligent to produce the proposed evidence."

Counsel for the petitioner has submitted that the petitioner has staked his claim to the suit land on the basis of agreement dated 4.12.2007 and copy of the said agreement was placed on record at the time of institution of the suit. It is further submitted that as the original agreement got misplaced, the petitioner neither brought on record the original agreement to sell nor examined the witnesses to prove the agreement in question. It is further argued that as copy of the agreement was already placed on record, possibility of the petitioner having fabricated the agreement does not arise in the given circumstances. It has been argued with vehemence that in case the petitioner is not allowed to prove the agreement to sell, it would be of serious consequence for the petitioner and his entire effort to pursue the litigation since 2012 may render nugatory for the suit is likely to fail on account of failure of the petitioner to prove the agreement. The petitioner is ready to compensate the respondents/defendants for delay, if any, attributable to him.

Counsel representing the respondents has supported the impugned order with the submission that the trial court, on a detailed consideration of the facts on record, has rightly declined to exercise its discretionary jurisdiction in favour of the petitioner. Another submission made by counsel is that had it been true that original agreement was not traceable at the relevant time, the petitioner could file an application for proving the agreement by way of secondary evidence and thereafter examine the relevant witnesses.

I have heard counsel for the parties, perused the paper book and various annexures available on record.

Prior to amendment of CPC w.e.f. 1.7.2002, Rule 17-A of Order 18 provided for production of evidence not previously known or which could not be produced despite due diligence (in common parlance known as additional evidence). A relevant extract therefrom reads as follows:-

> " 17-A. ***Production of evidence not previously known or which could not be produced despite due diligence-.*** Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage or such terms as may appear to it to be the just."

After Rule 17-A was deleted, there is no provision in the CPC specifically dealing with production of additional evidence by a party. This Court is not oblivious of the fact that deletion of Rule 17-A does not mean that no evidence can be received at all after a party closes its evidence. It appears that Rule 17-A was deleted as the amended CPC contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

The trial court in para 4 of the impugned order has taken note of as to how the proceedings progressed in the suit instituted in the year 2012. The issues were framed on 23.9.2014. The case was adjourned 7/8 times for evidence of the petitioner/plaintiff who eventually closed his evidence on 14.8.2015. Evidence of the other side was closed by order of the Court dated 11.7.2016. Thereafter, the case was adjourned four times for rebuttal evidence and at that stage, the present application came to be filed by the petitioner/plaintiff.

Counsel for the petitioner has not placed on record copy of the application for additional evidence. During the course of hearing, on asking of the Court, counsel for the petitioner produced a copy of the application dated 7.9.2016 in vernacular (Hindi). Perusal of the application would reveal that there is not even a whisper as to why the original agreement could not be produced on record and witnesses sought to be examined by way of additional evidence, detailed in para 4 of the application, could not be examined at an appropriate stage of the proceedings when the petitioner was granted 7/8 opportunities for adducing his evidence and eventually he himself closed his case. Not only this, after evidence of the respondents/defendants was closed by order, the petitioner filed the instant application after availing four opportunities for leading evidence in rebuttal.

Counsel for the petitioner has made an attempt to argue that as the original agreement was not traceable at the relevant time, the same could not be produced. The trial court has rightly held that if the original agreement was not traceable, the petitioner could seek permission to prove copy thereof by way of secondary evidence but by examining the witnesses who are now sought to be examined by way of additional evidence. By filing the present application, the petitioner has not tendered any explanation whatever, what to talk of making out a case that he could not produce this evidence despite exercise of due diligence or due to circumstances beyond his control. As a matter of fact, the petitioner has sought to examine as many as four witnesses by way of additional evidence at the fag end of trial, on mere asking. It is difficult to accept that as the legislature has deleted Rule 17-A with an intent that there should be little or no time gap between completion of evidence and commencement and conclusion of arguments, an application of the sort as has been filed by the petitioner can be allowed. If such a practice is encouraged, there would be no end to the agony of a litigant and the proceedings before the court would be further delayed.

For the foregoing reasons, discretionary jurisdiction exercised by the trial court negating plea of the petitioner cannot be faulted with. As a result, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

31.8.2017
PARAMJIT

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