

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

CR No. 7495 of 2017(O&M)

Date of decision: 28.11.2017

Mariyam

.....Petitioner

VERSUS

Yaseen and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashish Gupta, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 06.09.2017 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Mewat whereby application for additional evidence filed by the petitioner/plaintiff has been dismissed.

Counsel for the petitioner has submitted that the petitioner has filed a suit for declaration with consequential relief of permanent injunction to challenge sale deed bearing Vasika No.4954 dated 17.02.2012 to be the result of collusion, fraud and cheating practised by the defendants and the same is without consideration. It is argued that the defendants filed the written statement and, in turn, controverted the allegations made in the plaint. However, they have not raised any plea as to the source of money for payment of sale consideration to the petitioner/plaintiff. Yaseen –defendant No.1 appeared in the witness box and in cross examination he had stated that money pertaining to sale consideration was taken from his account as well as account of his wife maintained in Sarva Gramin Bank Branch Malai and OBC Bank Branch

Hathin. It is further argued that the defendants neither produced the statements of account/bank passbooks pertaining to those accounts nor examined a witness from the concerned bank, therefore, it would be in the interest of substantial justice if the petitioner is allowed to examine Managers of the aforesaid banks along with relevant records.

Another submission made by counsel is that the trial Court in para 5 of the impugned order has held that the petitioner/plaintiff in her cross examination has admitted the factum of execution and registration of agreement to sell dated 16.05.2011 qua the suit land in favour of respondent No.1 for a total sale consideration of Rs.4 lakh which is available on the case file as Ex.D2 but this observation is contrary to the facts elicited in cross examination of the plaintiff/petitioner.

I have heard counsel for the petitioner, perused the paper-book particularly the various annexures appended with the petition.

Indisputably, there is no specific provision in the Code of Civil Procedure, 1908 (in short 'CPC') permitting the parties to adduce additional evidence during trial. Previously, Order 18 Rule 17A CPC provided for production of evidence not previously known or which could not be produced despite due diligence. The said provision was deleted w.e.f. 01.07.2002 with a clear intent that unnecessary delay in conclusion of trial may be avoided. However, I am not oblivious of the fact that despite Order 18 Rule 17A CPC having been repealed by the Amending Act of 1999, Court can allow additional evidence in exercise of inherent jurisdiction under Section 151 CPC. Nevertheless inherent jurisdiction is required to be exercised with great care and caution.

The plea of the petitioner is that she was taken to the Tehsil office on the pretext of executing a mortgage deed but actually the

defendants got executed the sale deed dated 17.02.2012. The plaintiff in her cross examination has admitted execution of an agreement pertaining to suit land in favour of Yaseen prior to 17.02.2012 but stated voluntarily that she executed the agreement for getting money on interest for her Jeth (brother in law). As has been rightly argued by counsel that the petitioner has not specifically admitted execution of agreement to sell dated 16.05.2011 nor any such agreement was put to the witness. Under the circumstances, any observations made by the trial Court that the petitioner admitted the factum of execution and registration of agreement to sell dated 16.05.2011 qua the suit land in favour of respondent No.1 for sale consideration of Rs.4 lakh which is Ex.D2 shall not cause prejudice to the petitioner at the time of final adjudication of the suit. The trial Court is required to be more circumspect while recording any factual observation when otherwise the Court is supposed to refrain from touching merits of the case while deciding an interlocutory application.

This brings the Court to plea of the petitioner for permission her to adduce additional evidence. There is no such rule in law that a party can be allowed to adduce additional evidence in order to prove that a particular fact stated by contesting/rival party or his witness is incorrect. The petitioner filed the instant application for additional evidence in order to rebut testimony of defendant No.1 with regard to his having taken money from his account as well as accounts maintained by his wife. However, the application was filed without appreciating the settled position in law that a party in possession of evidence which can throw light on the issue in controversy has an obligation to produce the best evidence failing which it may invite adverse inference, in accordance with law. In this view of the matter, I find myself unable to accept contention of the

petitioner that she is entitled to permission for additional evidence as prayed for.

For the foregoing reasons, the petition fails and is accordingly dismissed.

NOVEMBER 28, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no