

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7652 of 2017

Date of decision: 09.11.2017

Rajesh Kumar

....Petitioner

V/S

Sharda Rani and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present : Mr. Rajeev Sharma, Advocate for the petitioner.

B.S WALIA, J. (Oral)

1. Revision petition has been directed against order dated 24.10.2017 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioner-plaintiff under Section 151 of the CPC for additional evidence has been dismissed.

2. Notice of motion.

3. Mr. Naveen Sharma, Advocate, who is present in Court, accepts notice on behalf of the respondents.

4. Brief facts of the case leading to the filing of the instant revision petition are that the petitioner had filed a suit for permanent injunction against the respondents for restraining them from interfering in his peaceful possession and from forcibly dispossessing him, from possession of property/plot measuring 33 sq.yards owned by him and comprised in Khasra No.24//4-14/1-6-7, Khata No.222/240-228/246 as per Jamabandi for the year 2008-2009 as shown in the site plan situated in Village Bhamian Kalan, Hadbast No.181, Tehsil and Distt. Ludhiana.

5. Learned counsel for the petitioner contends that the site plan of the property in dispute was prepared by Er. Ravi Kumar, Civil Engineer and was placed on record along with the plaint. However, the petitioner-plaintiff could not prove the said site plan by examining Er. Ravi Kumar due to oversight and as such the said site plan remained unexhibited in the suit. The petitioner-plaintiff wants to prove the site plan of the suit property by examining Ravi Kumar, Civil Engineer, by way of additional evidence in view of the said witness being a material and vital witness besides his evidence going to the root of the case apart from being essential for the just adjudication of the matter in controversy.

6. Application moved by the petitioner-plaintiff under Section 151 of the CPC for leading additional evidence was dismissed by the learned Civil Judge (Junior Division) Ludhiana vide order dated 24.10.2017 (Annexure P-1) by observing that the site plan in question was never exhibited by any of the plaintiff witnesses during plaintiff's evidence despite the fact that the site plan filed by the petitioner was attached along with the plaint and the petitioner had failed to explain as to why the site plan was not proved earlier by the plaintiff himself.

7. Mr. Naveen Sharma, learned counsel appearing on behalf of the respondents, has reiterated the reasoning given by the learned trial Court for dismissing the application.

8. Learned counsel for the petitioner relies upon the decision of this Court dated 3.7.2017 in Civil Revision No.4132 of 2017 arising out of the same suit out of which this instant revision petition arises where in somewhat similar circumstances the respondents herein had been allowed to examine the officials of the Electricity Department to formally prove the electricity bills which were already on the record.

9. Learned counsel for the petitioner contends that the claim of the petitioner herein is also on similar lines as the site plan which is sought to be proved is already on record and only formal proof of the same is required by examining Er. Ravi Kumar who had prepared the same.

10. Having considered the submissions of learned counsel, I am of the considered view that no prejudice will be caused to the defendant-respondents if the site plan which is already on record along with the plaint is allowed to be formally proved by examining the concerned Engineer who had prepared the site plan.

11. Accordingly, impugned order dated 24.10.2017 (Annexure P-1) is set aside. The petitioner is granted one opportunity to prove the site plan by examining Mr. Ravi Kumar, Civil Engineer, who had prepared the same, subject to payment of ₹5,000/- as costs to the respondent-defendants on the date to be given by the learned trial Court for the same.

November 09, 2017

ps

**(B.S. WALIA)
JUDGE**

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.