

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

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CR No.8257 of 2015 (O & M)
Date of Decision:21.11.2017

Bakhtawari deceased through LRs and others

...Petitioners

Versus

Hari Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parmod Parmar, Advocate
for the petitioners.

Mr. Rakesh Nehra, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

CM No.19411-CII-2017

Application is allowed.

Main Case

Defendants-petitioners are in revision petition against order dismissing application for permission to lead additional evidence under Order 41 Rule 27 CPC.

The application was filed before the Learned First Appellate Court. Learned First Appellate Court while deciding the application has recorded thus:-

“The plea has not been taken by her before the Trial court during the framing of issue in the suit. It is pertinent to mention here that this fact the appellants have not brought in the knowledge of the court during the arguments as well as evidence. The appellants/applicants have failed to put the affidavit of

the lawyer with whom the documents were withheld. So, this is also not sustainable that the documents in question were in possession of the lawyer. So, due to lack of the affidavit as well as admission of the lawyer regarding the plea taken by the appellants/applicants in para no.2 of the application is not sustainable. The respondents/plaintiffs have filed a suit on 27.5.2008. After issuing a notice, the appellants/applicants appeared and led their evidence way of affidavit and closed the evidence on 26.9.2013. During the evidence as well as arguments, no where disclosed by the appellants/applicants that the documents upon which the appellants/applicants want to remand the case under order 41 rule 27 of CPC are in possession of the lawyer and he has not placed those documents on record before the trial court. So, keeping in view all the facts and circumstances, the appellants/applicants have filed the application under order 41 rule 27 of CPC for delaying the appeal with malafide intention. It is pertinent to mention here that the appellants/applicants have also failed to disclose the name of the lawyer with whom all the documents were withheld. So, the application filed by the appellants/applicants is hereby dismissed.”

Learned counsel for the petitioners has vehemently argued that the records sought to be produced is part of the official record and

submitted that first appellate authority must examine whatever documents are produced before it.

On the other hand, learned counsel for the respondents has submitted that the documents sought to be produced are beyond pleadings. Petitioners want to produce on file, these documents to prove that the family was owner of some other land also apart from land in dispute. However, learned counsel for the respondents has read over the written statement filed by the defendants-petitioners wherein no such defence has been taken.

The additional evidence sought to be produced by way of the application can only be in accordance with the pleadings. Once defendants-petitioners did not plead before the learned trial Court that the family was owner of some other land, any evidence which is beyond pleadings cannot be read.

Still further, the documents were in the knowledge of the petitioners. The learned First Appellate Court has given cogent reasons to dismiss the application, which are not shown to be erroneous or perverse.

For the reasons recorded above, this Court does not find any good ground to interfere with the order passed by the Court.

Hence, this revision petition is dismissed.

21.11.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes
Whether Reportable : No