

**CR No. 886 of 2017 (O&M)**  
**DECIDED ON: FEBRUARY 07, 2017**

**.....PETITIONER**

## GENERAL PUBLIC AND OTHERS

## ....RESPONDENTS

Present: Mr. K.B. Raheja, Advocate  
for the petitioner.

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**CM No. 2680 of 2017**

Application is allowed, as prayed for.

**CR No. 886 of 2017**

Challenge in this revision petition is to the order dated December 17, 2016 (Annexure P-1) whereby an application preferred under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure (for short 'CPC') by petitioner/appellant for examination of witnesses namely Kaka Singh, Chand Singh, Jarnail Singh, Vara Singh and Jarnail Singh by way of additional evidence; has been dismissed.

The facts giving rise to the instant petition are that petitioner as well as respondent are the Class II legal heirs of the Mohan Singh and Teja

Singh who have shifted to Narobi, South Africa for the last 35/36 years. Since then, their whereabouts are not known. Thus, they are presumed to be dead. Petitioner filed a suit for declaration claiming himself to be one of the legal heirs of the deceased Mohan Singh and Teja Singh. However, respondents were in possession of the suit property. They denied the afore-said averments and resisted the suit. Ultimately, the suit preferred by the petitioner/plaintiff was dismissed by learned trial Court vide judgment and decree dated December 13, 2012. Aggrieved against the said judgment and decree, petitioner preferred Civil Appeal No. 05 of 09.01.2013 and during the pendency thereof, an application under Order XLI Rule 27 read with Section 151 of the CPC was moved by the petitioner/plaintiff but without considering the actual and factual facts and the legal proposition, the learned trial Court has dismissed the said application vide impugned order.

It is well settled proposition of law that documentary evidence sought to be produced by way of additional evidence if necessary for the just and proper adjudication of the matter in controversy should not be declined simply on the ground that it has been sought to be produced at penultimate stage of the suit or appellate stage. Moreover, documentary evidence can be allowed even before the pronouncement of judgment by learned trial Court or during the pendency of appeal. In support of this contention, learned counsel for the petitioner has placed reliance upon the various judgments rendered by this Court in the cases of **Rameshwar and others vs. Om Parkash and others; 2015 (3) RCR (Civil) 220; Walideen and others vs. Alim Haseen and others; 2014 (4) ICC 209; Vijay Kumar Aggarwal vs. Khushal Singh; 2015 (1) PLR 1; Jeeto @ Smt. Manjit Kaur vs. Union of India; 2007 (4) RCR (Civil) 408;**

This Court has given a deep thought to the submissions made by learned counsel for the petitioner but find the same to be without any legal or factual weight.

After the filing of the suit, which was resisted by respondents No.2 and 3, petitioner alone appeared in the witness box and closed the evidence and now after the disposal of suit, seeks permission to examine as many as five witnesses.

It is trite to observe that under Order XLI, rule 27 of the CPC additional evidence could be adduced in one of the three situations, namely, (a) whether the trial court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case as has been held by the Hon'ble Supreme Court in the case of *N. Kamalam v. Ayyaswami;* **(2001) 7 SCC 503; AIR 2001 SC 2802.**

Adverting to the facts of the case in hand, the case of the petitioner/plaintiff does not fall within any of the categories mentioned above. There is nothing on record to suggest that despite exercise of due diligence, the witnesses now sought to be examined could not be examined earlier. So, the mere fact that there was some inadvertence or negligence on the part of the counsel appearing before the learned trial Court is itself no ground to reopen the case for its denovo trial.

Taking into considerations the afore-said aspects, there is no infirmity or illegality in the impugned order. Instant revision petition being devoid of any merits stands dismissed.

No order as to costs.

FEBRUARY 07, 2017  
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(JASPAL SINGH)  
JUDGE

*Whether speaking/reasoned*      *Yes/No*

*Whether reportable*                      *Yes/No*