

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

CR No.991 of 2017 (O&M)
Date of decision : 04.08.2017

Nathu Ram

...Petitioner

Versus

Gurpreet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J.

Nathu Ram-defendant has filed the present revision petition under Article 227 of the Constitution of India against the order dated 10.01.2017 passed by the trial Court dismissing the application of the defendant-petitioner for admission or denial or in the alternative, permission to prove the documents by leading the evidence.

The plaintiff-respondent-Gurpreet Singh filed a suit for possession by way of specific performance of the agreement to sell dated 25.01.2011. The defendant-petitioner contested the suit. After framing of the issues, plaintiff as well as defendant concluded their evidence. When the case was fixed for rebuttal arguments, the defendant-petitioner filed an application for permission to lead additional evidence. The aforesaid application was dismissed. The defendant-petitioner filed a Civil Revision

Petition bearing No.6584 of 2016 in this Court and following order was passed on 30.09.2016. The same reads as under:-

“Counsel for the petitioner states that the petition may be dismissed as withdrawn but without prejudice to rights of the petitioner to file an appropriate application.

Dismissed as withdrawn. An application, if any, filed by the petitioner shall be decided by the trial Court, in accordance with law.”

Thereafter, defendant-petitioner filed another application which was titled as under:-

“Gurpreet Singh Versus Nathu Ram

Suit for possession by way of specific performance.

Sub:- Application for admit or deny the certified copy of plaint, written statement, agreement to sell dated 4.1.2011 and receipt Rs.2900000/- received from the suit titled Gurvinder Singh Vs. Nathu Ram, if plaintiff denied then permission to prove the same by leading evidence.”

Through this application, defendant-petitioner had called upon the plaintiff to admit or deny the certified copy of the plaint, written statement, agreement to sell dated 04.01.2011 and receipt of ₹29,00,000/-. Notice of the application was issued. The plaintiff-respondent filed reply asserting that the plaintiff is not party to any of the documents or the suit, therefore, he is not in position to admit or deny.

Learned trial Court after hearing the learned counsel for the parties passed the order. The operative part of the same reads as under:

“4. Now, by way of present application the applicant wants the respondent/plaintiff to admit or deny about the above stated documents. However, the respondent has

replied that he is not a party to the above said suit filed by Gurvinder Singh and he has no concern with any of the document sought to be admitted or denied by the plaintiff. So, he is not a position to admit or deny the same. Now it was incumbent upon the applicant to bring on record that the documents sought to be proved by the applicant by way of admission or otherwise are in any way related to the plaintiff but he failed to do so and he even had no pleaded in the application that the plaintiff is a party to any of the said document. So, when the plaintiff is in no way concerned with any of the said document then clearly he is not in a position to admit or deny the same. Further as regards the proof the said documents by other modes then in this regard it is apposite to mention here that the applicant failed to show that when the plaintiff is neither a party in the said documents nor have witnessed the same then how the same can be read against him and what is the relevancy of the same in the present suit. Moreover, from the very initial point the applicant was in the knowledge of said document but he has no brought the said documents while he was cross examining the witnesses of the agreement to sell in question and at this stage the mere marking of the said documents would not serve any purpose. So, I finding no merit in the present application. Hence, the same is hereby dismissed. Let, the file be put up on 18.1.2017 for rebuttal evidence, if any or for arguments.”

Learned counsel for the petitioner has asserted that the order passed by the learned trial Court suffers from material irregularity calling for interference by this Court. He has submitted that although it is correct that the plaintiff-respondent is not a party to these documents, however,

Court ought to have permitted the defendants to lead additional evidence because these documents would have helped the Court in adjudicating upon the dispute.

When called upon to explain, what is the relevancy of the documents sought to be produced, learned counsel for the petitioner submitted that these documents are also fabricated by the plaintiff because the attesting witnesses on both the agreements to sell are same, however, their signatures are different.

I have considered the submission of learned counsel and with his able assistance gone through the record. In my opinion, there is no force in the present revision petition. The main suit is at the stage of rebuttal and arguments i.e. at the final stage. The admissions or denials are provided under Order 12 of the Code of Civil Procedure. The purpose of admission or denial is to reduce the burden of the parties as well as the Court to prove facts pleaded and documents sought to be produced in evidence. Once the plaintiff and defendant have already led their evidence and witnesses have cross-examined, there is no purpose of filing the application for admission or denial.

Learned counsel for the petitioner has further submitted that such application should be treated as application for additional evidence. The learned Court after examining this argument has held that the defendant-petitioner has failed to prove any relevancy of the aforesaid documents. It has further been noticed by the Court that these documents were very much in the knowledge of the defendant-petitioner before filing of the suit because defendant-petitioner himself say that he is party to the

aforesaid suit and he is signatory to the agreement to sell and receipt.

I have considered the submissions. In my opinion, defendant-petitioner has not been able to make out any case for additional evidence for the following reasons:-

1. The aforesaid documents are not between the plaintiff and the defendant.
2. The plaint and written statement are with respect to a suit filed by one Gurvinder Singh.
3. The agreement to sell and the receipt dated 04.01.2011 have been allegedly executed by Nathu Ram-defendant-petitioner in favour of Gurvinder Singh.
4. These documents namely plaint, written statement, agreement to sell and receipt have no relevancy for the purpose of decision of the case. Further these documents were very much in knowledge of the defendant-petitioner.
5. The defendant-petitioner did not produce the documents while leading his own evidence. Now once the evidence of defendant has been closed, defendant-petitioner cannot be permitted to lead evidence.

A reading of the application would prove that the defendant-petitioner has not pleaded that these documents were not in his knowledge. The petitioner has only asserted that certified copies of these documents shall be very material for proper adjudication of the case. Defendant asserts that the agreement in question in the present suit and agreement to sell dated 04.01.2011 are fabricated documents in connivance with the witnesses.

The provision for additional evidence as it existed under Order 18 Rule 17-A of Code of Civil Procedure, has already been deleted by amendment in the Code of Civil Procedure in the year 2002. The defendant-petitioner has tried to invoke the inherent powers of the Court under Section 151 CPC.

Taking into consideration that these documents are not relevant and the plaintiff is not party to the aforesaid documents, therefore, there is no force in the arguments of learned counsel.

Finding no merit in the present Revision Petition, the same is ordered to be dismissed.

04.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No