

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

Civil Revision No.11 of 2018.
Decided on:-January 09, 2018.

Rambhateri.

.....Petitioner.

Versus

Lali Devi and another

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Munish Gupta, Advocate
 for the petitioner.

HARI PAL VERMA, J.

Petitioner Rambhateri has filed the present civil revision petition under Article 227 of the Constitution of India impugning the order dated 20.11.2017 (Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Kanina, whereby the application filed by respondent No.1-plaintiff seeking permission to lead additional evidence has been allowed at a much belated stage.

Briefly stated, the respondent No.1-plaintiff had filed a suit for declaration to the effect that the plaintiff along with proforma defendant in the suit are owners in possession of the suit land, as detailed in the plaint and therefore, they being coparceners are entitled to get their names entered in the revenue record as per their share. It has further been prayed that the deed No.2228 dated 09.03.2006 executed on behalf of Gulzari Lal in favour of the petitioner-defendant, on the basis of which mutation No.3217 has been

registered in favour of the petitioner, is against law and is based on misrepresentation.

Learned counsel for the petitioner-defendant has argued that the impugned order dated 20.11.2017 passed by learned civil Court on the application filed by the respondent-plaintiff under Section 151 CPC allowing the plaintiff to lead additional evidence is not sustainable in the eyes of law. No justified reason has been furnished by the plaintiff to lead additional evidence. The plaintiff has led entire evidence after availing numerous opportunities and thereafter, the evidence of plaintiff was closed on the basis of statement of the counsel for the plaintiff after tendering documents Ex.P1 to Ex.P5. Even the petitioner-defendant has also concluded her evidence and the same was closed. Thereafter, the case was fixed for arguments, but the respondent No.1-plaintiff, in order to delay the matter, had filed an application under Order XVIII Rule 17-A read with Section 151 CPC with the averments that some revenue record of consolidation and Jamabandi was left to be produced on record and the same was relevant for just decision of the case. Therefore, the plaintiff had prayed for production of those documents by way of additional evidence.

In her reply to that application, the petitioner-defendant had specifically pleaded that the application submitted by the plaintiff is nothing but an attempt to delay the proceedings in the suit and the documents sought to be produced as additional evidence cannot be allowed to be taken in evidence. Moreover, the respondent-plaintiff had already closed his evidence by making a statement and, therefore, the question of allowing the application

for leading additional evidence does not arise. The said application was allowed by learned civil Court vide order dated 27.03.2017.

He has further argued that when the case was again fixed for arguments, the respondent No.1-plaintiff in order to delay the matter further and even without there being any specific provision of law, has moved another application dated 13.07.2017 under Section 151 CPC to lead additional evidence. In her application, the plaintiff has prayed that mutation of inheritance qua Leela Ram son of Harsahai and Gulzari Lal son of Leela Ram were left to be produced on record. Since there are other litigations pending between the parties, the said documents were left out in the brief of the counsel and could not be produced on record.

He has further argued that the petitioner-defendant has refuted the very averments made in the application dated 13.07.2017 moved by respondent No.1-plaintiff. The second application cannot be entertained more particularly when the respondent-plaintiff has earlier also moved an application under Order XVIII Rule 17-A read with Section 151 CPC, which was allowed by learned civil Court vide order dated 27.03.2017. He has argued that the respondent No.1-plaintiff is unnecessarily delaying the proceedings and the second application dated 13.07.2017 was liable to be rejected. There is no provision for moving second application for production of additional evidence, but still, learned civil Court has allowed the said application vide impugned order dated 20.11.2017 and permitted the respondent No.1-plaintiff to produce the additional evidence.

I have heard learned counsel for the petitioner.

The primary argument, as raised by learned counsel for the petitioner is that the evidence of the parties to the suit has already been closed and it is at a belated stage, the application seeking production of additional evidence has been filed with the plea that the documents sought to be placed by way of additional evidence remained in another envelope and such documents are necessary to be produced for proper adjudication of the case.

No doubt, earlier also the respondent No.1-plaintiff had filed an application under Order XVIII Rule 17-A read with Section 151 CPC that she wanted to produce revenue record on the case file which was necessary for proper adjudication of the case and the said application dated 17.11.2016 was allowed by the civil Court vide order dated 27.03.2017. However, through a subsequent application filed under Section 151 CPC, the plaintiff has sought to produce the mutation of inheritance of Leela Ram and Gulzari Lal. Since the said record was originally in Urdu language, the plaintiff has got the same translated in Hindi language and accordingly, sought the same to be produced by way of additional evidence.

Thus, in this manner, there is no illegality in the impugned order dated 20.11.2017 passed by learned civil Court, wherein it has been observed that the translated record was not present with the plaintiff before filing of the application and the same was translated after filing the application. Therefore, in order to meet the ends of justice and to prevent the abuse of process of law, learned civil Court has rightly allowed the application while exercising power under Section 151 CPC permitting the respondent No.1-plaintiff to lead

additional evidence. Learned civil Court has also imposed cost upon the plaintiff.

Accordingly, the impugned order dated 20.11.2017 (Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Kanina is affirmed and the instant civil revision petition, being devoid of any merit, is dismissed.

It is, however, made clear that the observations made hereinabove shall not be construed as an opinion on the merits of the suit.

January 09, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No