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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1637-2016 (O&M)

Date of decision : 09.02.2018

Balwinder Singh

... Petitioner(s)

Versus

Jaspal Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Rangi, Advocate with
Mr. Saurav Bhatia, Advocate
for the petitioner.

Mr. Parvinder Singh, Advocate
for respondents No.1 to 4.

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.4 is aggrieved of the impugned order dated 18.01.2016 (Annexure P-4) whereby an application at the instance of the plaintiff(s) for placing on record the sale deed by way of additional evidence, has been allowed.

Learned counsel for the petitioner-defendant No.4 submits that the respondent(s)-plaintiff(s) instituted a suit for declaration to the effect that the plaintiffs are the owner and in joint possession of a land measuring 3½ kanal 2 maral in equal share comprised in kh/kh No.115/120 khasra No.13//3 (8-0) as per jamabandi for the year 2006-2007 on the basis of the sale deed dated 01.02.1978 and with a further prayer by challenging the sale deeds dated 17.02.2006 executed by the deceased-Shamsher Singh in favour of defendant No.3, dated 25.06.2000 by defendant No.3 in favour of

defendant No.4, dated 02.09.2008 by the deceased Shamsheer Singh in favour of defendant No.2. Allowing of the application for additional evidence will tantamount to *de novo* trial. The provisions of Order 18 Rule 17-A CPC have been done away with, therefore, there is no provisions in the CPC for allowing the application. It would be tantamount to be a rebuttal evidence, but in the absence of rebuttal issue, therefore, the impugned order, under challenge, is not sustainable and urges this Court for setting aside the same.

Learned counsel for the respondent(s)-plaintiff(s) submits that it was sheerly due to inadvertence of the counsel in not producing the sale deed. The sale deed is a registered document, which is *per se* admissible and can be tendered into evidence. The witnesses to the sale deed as per the *ratio decidendi* culled out by Hon'ble Supreme Court in **“Bayanabai Kaware V/s Rajendra s/o Baburao Dhote” (2018) 1 Supreme Court Cases 585**, are not required to be examined and the other party can be compensated in terms of money. He undertakes that he will not examine any witness to the Sale Deed.

In rebuttal, Mr. Rangi, submits that such an additional evidence tantamounts to lead rebuttal evidence, in the absence of any rebuttal issue. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in **CR No.2292 of 2016** titled as **“Usha Rani V/s Rajinder Singh Dhanda and others”** decided on 31.03.2016.

I have heard the learned counsel for the parties and appraised the paper book.

There is no dispute to the *ratio decidendi* culled out by this Court in **Usha Rani's case** (supra) that in the absence of rebuttal issue,

additional evidence cannot be allowed, but here the suit *prima facie* was based upon the sale deed, which due to the inadvertence of the counsel for the respondent(s)-plaintiff(s) could not be placed on record. Since Mr. Parvinder Singh has already undertaken not to examine any witness to the sale deed, even otherwise, as per the provisions of Section 54 of the Transfer of Property Act, as laid down in *Bayanabai Kaware's case* (supra), no attesting witness to the sale deed is required to be examined. The registered document can always be tendered into evidence. It would not, thus, amount to filling up the lacuna, but enable the Court for the adjudication of the *lis* as other party would be able to address the arguments on all points. Since, the plaintiff(s) had not been diligent in bringing on record the evidence, therefore, the other party suffered an irreparable loss, I deem it appropriate to impose a cost of ₹11,000/- to be paid to learned counsel for the petitioner-defendant No.4 in the High Court within a period of one month from the date of the receipt of the certified copy of this order.

With the aforesaid observations, by upholding the impugned order, under challenge, the present revision petition stands disposed of.

09.02.2018

Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No