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

CR-1867-2016**Date of decision : 22.01.2018**

Dalbir Kaur and others

... Petitioner(s)

Versus

Sarabjit Kaur and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWALPresent: Mr. B.S. Sidhu, Advocate
for the petitioners.

None for respondent No.1.

AMIT RAWAL, J. (ORAL)

The petitioners-plaintiffs are aggrieved of the impugned order dated 26.02.2016 (Annexure P-7), whereby an application moved by the petitioners-plaintiffs for summoning the following witnesses in rebuttal, has been dismissed:-

- i) Dr. Navjot Kaur, Medical Officer, Municipal Corporation, Amritsar.
- ii) Joginder Singh s/o Roor Singh R/o Village Gandiwind, Tehsil & District Tarn Taran.
- iii) Manjit Singh s/o Mohinder Singh R/o Village Chima Khurd, Tehsil & District Tarn Taran regarding factum of death of Jai Pal Singh on 20.07.1988 and his last rites in Village Gandiwind.
- iv) Avtar Singh s/o Santokh Singh r/o Village Gandiwind, Tehsil and District Tarn Taran.
- v) Clerk-cum-record keeper from the office of CMO, Births & Deaths, Tarn Taran along with record of death of Jaipal Singh of dated 20.07.1988.

Mr. B.S. Sidhu, learned counsel appearing on behalf of the

petitioners-plaintiffs submits that the suit was filed seeking following claim:

"Suit for declaration and joint possession to the effect that the plaintiffs are the owners of the land measuring 27 kanals 12 marlas being 1/6th share of land measuring 165 kanals 14 marals bearing Khasra Nos.51/4/2(2-0), 5/2(0-11), 6/2(5-4), 7(8-0), 8(8-0), 9/1 (4-15), 13(7-13), 14(5-0), 15/1(6-8), 16(7-16), 17(8-0), 18(8-0.), 19/2(4-10), 22(5-6), 26(2-4), 213(7-7), 24(8-0), 25(8-0), 55/2(4-13), 3(7-4), 4 (8-0), 5(8-0), 6(8-0), 7(8-0), 8(3-4), 15(5-16), 26(7-14) as entered in Jamabandi for the year 2004-2005, situated in Village Mona Wala, Tehsil and Distt. Amritsar and the alleged general power of attorney dated 17.8.1995 regd. On 13.09.1995 alleged to have been executed by Jai Pal Singh in favour of the defendant No.2 and the alleged sale deed dated 23.4.1997 alleged to have been executed by the defendant No.2 being attorney of Jai Pal Singh in favour of defendant. No.1 are illegal, null and void, forged and fabricated documents and are the result of fraud, misrepresentation and concoction and the same has no binding force on the rights of the plaintiffs and the same are liable to be set aside and cancelled, without consequential relief of permanent injunction restraining the defendant No.1 from selling, alienating, transferring or disposing of any part of the suit land to any body in any manner i.e. by way of sale, mortgage, lease, gift etc."

It was a categoric case set up by the plaintiffs that forgery was committed by the defendant and on acquiring the knowledge the matter was reported to the DSP, resultantly, an FIR bearing No.0389 dated 14.11.2006 under Section 419, 420, 465, 467, 468, 471 and 120-B IPC was registered against the defendants as well as the against the alleged witnesses of the power of attorney and sale deed in Police Station, Civil Lines, Amritsar. The defendant(s) had no right, title and interest in the property and by taking undue advantage of the sale deed, threatened to sell and alienate the

suit land, therefore, injunction was also sought. Since the defendant(s) contested the suit by taking many objections and on the basis of variance, learned trial Court framed the following issues:-

- “1. Whether the plaintiff are entitled to declaration as prayed for?*
- 2. Whether the plaintiff are entitled to joint possession of the suit property as prayed for?opp*
- 3. Whether the plaintiff are entitled to permanent injunction as prayed for?OPD1.*
- 4. Whether the plaintiff have got no locus standi to file the present suit?OPD*
- 5. Whether the suit is time barred being filed beyond the prescribed limitation period as prayed for? OPD1*
- 6. Whether the suit is not maintainable in the present form? OPD1*
- 7. Whether the suit is not properly valued for the purpose of Court?OPD1*
- 8. Whether the plaintiff has no cause of action to file the present suit?OPD1*
- 9. Whether the plaintiff are estopped by their own act and conduct from filing the present suit? OPD1*
- 10. Whether the defendant No.1 is a bona fide purchaser of the suit property if so its effects? OPD1*
- 11. Whether Mrs. Kulbir is a duly constituted Attorney of Plaintiffs No.1 to 4 as prayed for? OPD1*
- 12. Relief.”*

The alleged sale deed was executed on the basis of the power attorney dated 17.08.1995 executed by Jai Pal Singh, which was registered on 13.09.1995, whereas Jai Pal Singh had died on 20.07.1988. Though the defendant(s) denied the date of death of Jai Pal Singh, but did not give exact date of death and in this regard, counsel for the plaintiffs while closing the

evidence in affirmative of the plaintiff, suffered following statement:-

*“Statement of the M.S. Chinna Counsel for the plaintiff.
I tender in the evidence of the plaintiff certified copy of the Jamabandis Exs.PX/1 to Ex.PX4, certified copy of Mutation order Ex.PX/5, certified copy of application os Ex.PX/6, certified copy of order dated 15.2.92 Ex.PX/7, certified coy of order dated 16.1.92 Ex.PX8, certified copy of surety bond mark PX/9, original registered power of attorney Ex.PX/10, original agreement dated 14.5.1993 mark PX.11 and close the evidence of in affirmative of the plaintiff (the counsel of the defendant has objected the production and exhibition of documents on the ground late production and mode of proof. Objection kept open).”*

The defendant(s) in her evidence examined one Sandeep Singh, Clerk of Municipal Corporation, Amritsar as DW-1, who produced the Death Register of the Municipal Corporation, Amritsar from 26.06.1999 to 02.10.1999 to prove the alleged entry at Serial No.1989 dated 06.08.1999 regarding the factum of death of death of Jai Pal Singh to be 05.08.1999. The relevant extract of the cross-examination of the aforementioned witness, which has been noticed in the notice of motion order dated 14.03.2016, reads as under:-

“All the registers are genuine one and this register cannot be retained it being public document in day to day proceeding of Municipal Corporation. Heard. In view of the submissions by counsel for both the parties, this Register pertaining to the death record brought by this witness cannot be retained by the court. It is a public document for day to day proceedings of MCA. However, plaintiff is at liberty to summon witness again in his rebuttal evidence along with the register to prove the contention. It is correct that it has come in the newspaper regarding the Death and Birth record of our office that many

irregularities have been committed in our office.”

On acquiring the aforementioned factum of the alleged date of death of Jai Pal Singh, the petitioners-plaintiffs made reasonable enquiry by submitting the complaint to the Municipal Corporation and the enquiry was conducted by the Medical Officer, Municipal Corporation, Amritsar, gave the following observations in the enquiry report:

"From the above-said whole enquiry, the undersigned has arrived at a conclusion that present staff of office of Department of Birth and Deaths is right at their place as they have issued certificate on the basis of available record, but since there is no detail in the Chattiwind record about the cremation in question whereas details of other cremations have totally tallied with the records. From this it is concluded that this certificate is forged.”

It is in this backdrop of the matter, an application was moved to bring the witnesses by way of rebuttal evidence, but the same has erroneously been rejected.

This Court on 14.03.2016 issued notice of motion and as per order dated 08.07.2016, Mr. S.S. Majithia, Advocate had appeared on behalf of respondent No.1 and thereafter, again appeared on 04.08.2017, but thereafter no one has appeared on behalf of respondent No.1, even today there is no representation on his behalf. Accordingly, I proceed to decide the present revision petition on merits.

I have heard the learned counsel for the petitioners-plaintiffs and appraised the paper book.

From the perusal of the issues, statement suffered by the counsel and the cross-examination of DW-1, much less, observations of the Inquiry Officer, in my view, all these factors would definitely enable the

Court to decide the controversy in the manner as has been adopted by the plaintiffs, particularly in view of the observations recorded during the cross-examination of DW-1, extracted above. The trial Court remained totally oblivious of the aforementioned findings while dealing with the application of the plaintiffs. It was a categoric case of the plaintiffs that Jai Pal Singh had died much before the date of the execution of GPA and the sale deed, but when an attempt was made to prove the date of death, for the period, for which, those documents were executed, but the inquiry report came to be later, which the plaintiffs want to prove on record by way of rebuttal evidence along with the other documents. In my view, strict rigors of Order 18 Rule 3 CPC should not applied to such type of matter and therefore, the order of the trial Court in not granting the opportunity is wholly capricious and fallacious, much less, without jurisdiction. Resultantly, the application seeking summoning of the aforementioned witnesses by leading rebuttal evidence is allowed. However, the petitioners-plaintiffs are granted two effective opportunities to lead the rebuttal evidence.

The present revision petition in aforementioned terms stands allowed.

22.01.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No