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

CR-2574-2015 (O&M)

Date of decision : 27.03.2018

Chameli Devi

... Petitioner(s)

Versus

Sudhir Arora and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Narinder Kumar Vadhera, Advocate
for the applicant/petitioner.

Mr. Vikas Chaudhary, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

CM-2445-CII-2018

This is an application under Section 151 of the Code of Civil Procedure for restoration of the aforesaid revision petition, which has been dismissed in default on 30.01.2018.

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the revision petition is ordered to be restored to its original number i.e. CR No.2574 of 2015.

CR-2574-2015

The petitioner-plaintiff is aggrieved of the impugned order dated 19.03.2015 (Annexure P-6), whereby an application at the stage of the defendant's evidence under Order 11 Rules 12 and 14 CPC for discovery of documents i.e. title deeds, bank books, PPF Pass Book, Life Insurance

Policies and other documents of the deceased Mohinder Pal i.e. son of the plaintiff, had been rejected by the trial Court.

Learned counsel appearing on behalf of the petitioner-plaintiff submitted the plaintiff filed a suit for declaration as well as consequential relief of injunction. The plaintiff led the evidence in support of the averments. However since all the documents were in possession of the defendants and defendant No.1, in cross-examination, admitted the possession of the documents with a rider that they can be produced, in case the Court below orders for such request. The defendants did not deny the existence and possession of the documents while submitting the reply to para No.4 of the application, therefore, no harm and prejudice would have been caused to the defendant or the other party for production of the documents as it would help the Court in rendering the decision in most pragmatic and reasonable manner.

On the contrary, learned counsel for the respondents-defendants submitted that the application is most vague and not maintainable as the requirement of the law for invoking the aforementioned provisions is only before settlement of the issues and therefore, the same had rightly been dismissed. He has also taken the aid of the provisions of Code of Civil Procedure that there is no specific pleadings with regard to the consequential possession of the aforementioned document, thus urges this Court for dismissal of the present revision petition.

In rebuttal, Mr. Vadhera, Advocate, has drawn the attention of this Court to the paragraph No.15 of the plaint to contend that there is categorical pleading with regard to the possession of the documents, aforementioned, with defendant No.1.

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

It would be apt to reproduce the paragraph 15 of the plaint, para 4 of the application, para 4 of the reply to the application as well as the relevant portion of cross-examination of defendant No.1-Sudhir Arora, which reads thus:-

“Paragraph 15 of the Plaint

That the title deeds, bank books, PPF Pass Book, Life Insurance Policies and other documents are in possession of defendant No.1 and 2 who refused to deliver the same. They also did not allow the plaintiff to prepare the site plans of the property in dispute. A separate application is being filed with the request that defendant Nos.1 and 2 be directed to produce all the documents referred above which are in their possession and also any other document regarding the property of Mohinder Pal Garg and further that defendant Nos.1 and 2 be directed to allow the plaintiff to get the site plans prepared.

Para 4 of the application

That the title deeds, bank pass books, PPF Pass Book, Life Insurance Policies and other documents are in possession of respondent Nos.1 and 2 who refused to deliver the same. They also did not allow the plaintiff to prepare the site plans of the property in dispute.

Para 4 of the reply to the application

Para No.4 of the application is incorrect and is denied. All the details of the assets were mentioned by the deceased in his Will. The plaintiff cannot claim any documents from the defendants about the said properties and the plaintiff cannot be allowed to prepare the site plan of the property in dispute.

Relevant Portion of Cross-examination of defendant No.1-Sudhir Arora

I do not know if Chemali Devi Plaintiff being only legal heirs

of deceased Mohinder Pal is entitled for the custody of all the documents of title and other personal record and belonging of deceased Mohinder Pal. We can allow Chemali Devi to receive all the above said articles and documents, if Court allow the same to the plaintiff. We can allow the plaintiff to enter to the properties for the preparation of site plan if the Court allowed the plaintiff for the said purpose.”

The cumulative effect of the aforementioned pleadings and the evidence on record reveals no manner of doubt that the defendants have not denied the existence and possession of the documents. In case, they have not produced the same, the Court will draw the adverse inference on non-production, but the manner and mode as adopted by the plaintiff would not help the plaintiff for adjudication of the *lis*, as the plaintiff can always take the plea of adverse inference.

It is made clear the non-production of the documents, much less, refusal of the defendants to the plaintiff to prepare the site plan result into drawing of the adverse inference.

Resultantly, while upholding the impugned order, under challenge, the present revision petition stands disposed of.

27.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No