IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2679 of 2017
Date of Decision: March 28, 2018

Kiran Bala

...Petitioner

Versus

Rupender Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Pritam Saini, Advocate,
for the petitioner.

Mr.Rishi Nijhawan, Advocate,
for respondent Nos.1 & 2.

Mr.Rajiv Sidhu, Advocate,
for respondent No.3.

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AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order dated 21.3.2017 (Annexure P-6) passed by the Additional District Judge, Kurukshetra.

Mr.Pritam Saini, learned counsel appearing on behalf of the petitioner-plaintiff (respondent in Civil Appeal No.1269 of 2013) submitted that the plaintiff instituted the suit for declaration challenging the sale deed, which was decreed by the trial Court vide judgment and decree dated 13.11.2013. Respondent-defendants, namely, Rupender Kaur and Narender Kaur preferred an appeal. During the pendency of the appeal, an application was moved by them for leading additional evidence which was allowed with no objection from the petitioner by the Lower Appellate Court vide order

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dated 15.3.2017 (Ex.P1) and on the same date, respondents (appellants in the appeal) tendered certified copy of mutation No.1541 in additional evidence as Ex.D10 and closed the evidence. The matter was ordered to be put up on 21.3.2017 for production of rebuttal evidence by the petitioner-plaintiff. The evidence sought to be placed on record were mutation No. 1707 dated 21.1.2014 and jamabandi for the year 2013-14 along with Rapat Roznamcha dated 22.9.2006, 15.12.2006 and Rapat No.377 dated 28.3.2012. However, the Court only permitted Rapat Roznamcha and Rapat as Ex.P15, Ex.P16 and Ex.P17 and did not allow to produce on record the additional evidence, i.e., mutation dated 21.1.2014 and jamabandi for the year 2013-14.

He submitted that once the permission to rebut the additional evidence has been granted to them, no harm would be caused as it would be subject to adjudication at the final stage of the appeal. It would be seen whether those documents were necessary, but the rights could not be curtailed.

Mr.Rishi Nijhawan, learned counsel appearing on behalf of respondent Nos.1 and 2-defendants submitted that the mutation and jamabandi, which has been declined by the Court, was the latest evidence and could not be treated as rebuttal evidence of additional evidence as it was some other evidence and rightly so, has been rejected and, thus, urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the order under challenge is not sustainable, for, the conceded position on record is that vide order dated 15.3.2017, the Lower Appellate Court allowed the application of the respondent-

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defendants for leading additional evidence with no objection from the petitioner-plaintiff and on the same date, defendant-respondents tendered certified copy of mutation No.1541 as Ex.D10 and the matter was slated for evidence. The Court could not have gone into the merits of the documents for the purpose of rebuttal evidence as it would have been in its domain to decide at the final stage of the appeal. Any expression on merit of the document would have definitely taken away the right of the petitioner-plaintiff vis-a-vis the additional evidence permitted by the Lower Appellate Court. No prejudice and harm would be caused as the defendants would also be able to raise the objections at the stage of final arguments.

For the reasons stated above, the impugned order is set-aside. Liberty is granted to the petitioner-plaintiff to tender the certified copy of mutation No.1707 dated 21.1.2014 and jamabandi for the year 2013-14, which was declined as rebuttal evidence to the additional evidence and thereafter the Lower Appellate Court would make an endeavour to decide the appeal as expeditiously as possible in accordance with law.

Revision petition stands allowed.

March 28, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**

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