

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

CR No.3916 of 2016

Date of Decision:-07.2.2018

Kewal Krishan Passi and another

...Petitioners

Versus

Ram Kali @ Poonam and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Chirag Wadhwa, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondent No.1.

AMIT RAWAL J.(Oral)

Petitioner-defendant is aggrieved against the impugned order whereby the application moved under Section 151 of the Code of Civil Procedure to lead evidence in a suit filed by one Ramkali seeking a decree of declaration by claiming herself to be owner in joint possession of a house No.1118, Sector 6, Urban Estate, Karnal and by setting aside the agreement to sell dated 5.10.2007 and subsequent extensions and the judgment and decree dated 26.10.2010 passed in civil suit No.24 of 2010, has been dismissed.

Learned counsel appearing on behalf of petitioner-defendant submitted that the aforementioned suit was filed by the respondent by challenging the aforementioned decree in pursuance to agreement to sell

dated 5.10.2007 executed by Satpal. Satpal executed an agreement and did not come forward to perform his part of agreement. Thereafter the suit for specific performance was filed. During the pendency of the suit he went missing. However, a compromise was arrived at between wife and two other LRs namely Sonu and Banarsi vide compromise deed Ex.C1 resulting into passing of the judgment and decree dated 26.10.2010. It is the aforementioned judgment and decree which has been challenged by Ramkali being legal heir of Satpal. However, during the pendency of the suit in rebuttal evidence, the petitioner-defendant acquired the knowledge that the account of the Satpal was not closed as he was alive which is evident from the statement of account Ex.P2 (colly) wherein an account bearing No.20646291133 was operated by Satpal through cheque dated 22.2.2011 for a sum of Rs.10,000/- leading to inference that he was alive and such aforementioned evidence would be essential and necessary for the adjudication of the case.

The Courts below have dismissed the application on the premise that no pleading with regard to Satpal being alive has been produced on record. With regard to that he has drawn the attention of this Court towards preliminary objection No.4 taken in the written statement.

Per contra Mr. Parminder Singh, Advocate learned counsel appearing on behalf of respondent-plaintiff submitted that the evidence at this stage cannot be permitted in view of the fact that the provisions of Order 18 Rule 17-A has been deleted. Even otherwise it would be tantamount in filling up of the lacuna. The aforementioned evidence of the

petitioner-defendant cannot be permitted at this stage as the expression “despite exercise of due diligence” has not been complied with and urged this Court for dismissal of the revision petition.

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

The facts noted above are not in dispute. The only fact is to be seen that whether the application moved by the petitioner for bringing on record the factum of statement of account which has been operated by Satpal on 22.2.2011 that is post decree dated 26.10.2010, is necessary or in such circumstances would help for the adjudication of the suit instituted by the respondent-plaintiff challenging the decree and agreement to sell or not, in my view it would be essential for adjudication of lis as it goes deep to root of the matter. No harm would be caused as the plaintiff would be able to rebut the same in accordance with law.

Resultantly, the impugned order is set aside and the application moved for additional evidence is allowed. The bank statement and the complaint has already been given to the DSP. The petitioner is granted one effective opportunity in accordance with law to lead the evidence subject to payment of costs of Rs.5000/- to be paid to the counsel for the respondent in High Court.

Disposed of.

February 07, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No