

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

Sr. No.221

C.R. No.5305 of 2015

Date of decision: 13.12.2018

Jaibuni

....Petitioner

versus

Jummey Khan and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Pankaj Jain, Advocate
for the petitioner.

Mr. Ravi Malik, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed to challenge therein order dated 16.07.2015 passed by the District Judge, Mewat (for short – 'the Appellate Court') through which respondent No.1 has been permitted to lead additional evidence in the form of voter I-card of Smt. Chahti widow of Chander Bhan. Order dated 24.07.2015 passed by the Appellate Court through which permission was not granted to the petitioner to rebut the aforesaid additional evidence is also challenged.

At the time of hearing of the matter, Mr. Pankaj Jain, learned counsel appearing for the petitioner submitted that he presses the petition only qua challenge to the order dated 24.07.2015 passed by the Appellate Court.

The facts, in brief, are that the petitioner alongwith respondent No. 2 filed a suit seeking therein to be declared owners in possession of the land detailed and described in the plaint (for short – the suit property). It was further prayed that judgment and decree dated 13.01.1995 and consequent revenue entries be also declared null and void. Permanent injunction to restrain respondent No.1, who was the defendant in the suit, from making any interference in the ownership and possession of the petitioner/plaintiffs over the suit property was also sought. The primary case set up by the petitioner/plaintiffs was that through judgment and decree dated 04.05.1985 which had been passed on the statement of one Smt. Chahti, they had been declared owners in possession of the suit property. In March 2010, respondent No.1 threatened to dispossess the petitioner/plaintiffs from the suit property and also to alienate the same. After making enquiries, they came to know that respondent No. 1 was asserting his right over the suit property on the strength of a judgment and decree dated 13.01.1995 which had been passed on the basis of Smt. Chahti's statement to declare respondent No.1 owner in possession of the suit property. After considering the evidence which was led by both the parties, the Trial Court decreed the petitioner's suit after concluding that Smt. Chahti had died on 22.09.1993 and therefore she was not alive on the date when respondent No.1 had filed his suit leading to the passing of the aforesaid decree dated 13.01.1995 on which respondent No.1 had based his entire claim. Through an appeal respondent No.1 challenged the aforesaid decree passed by the Trial Court. While such appeal was pending, an application was filed by respondent No.1 seeking therein to produce additional evidence in the form of various documents including voter I-Card

of Smt. Chahti. Such evidence was sought to be produced by him to show that at least till 13.01.1995 Smt. Chahti was alive. Through order dated 16.07.2015, the Appellate Court permitted respondent No.1 to produce only the Voter I-Card of Smt. Chahti as additional evidence. No other document was allowed to be produced. Since through the aforesaid order dated 16.07.2015 the Appellate Court had not granted the petitioner/plaintiffs any right to rebut the Voter I-Card of Smt. Chahti, an application was filed by them seeking such permission on the dismissal of which the present proceedings were launched.

Learned counsel for the parties have been heard.

Through their suit, the petitioner and respondent No. 2 seek a declaration with regard to ownership and possession of the suit property. They base their claim on a judgment and decree dated 04.05.1985 passed on the statement of Smt. Chahti who was earlier the owner of the suit property. Respondent No.1 seeks to counter the petitioner's case by claiming himself to be the owner of the suit property on the basis of another judgment and decree dated 13.01.1995 also passed on the statement of the aforesaid Smt. Chahti. The Trial Court decreed the petitioner's suit after recording a specific finding that Smt. Chahti had died on 22.04.1993 i.e. even before the filing of respondent No.1's suit in the year 1994 leading to the passing of the decree dated 13.01.1995, on which respondent No.1 had based his entire claim. Respondent No.1 challenged such decree before the Appellate Court during the pendency of which an application was filed by him for leading additional evidence in the form of several documents including Voter I-Card of Smt. Chahti. The attempt was to show that she was alive at the time of filing of the suit by respondent No.1 which was later decreed on

13.01.1995. The Appellate Court permitted respondent No.1 to lead additional evidence in the form of the Voter I-Card of Smt. Chahti primarily on the ground that leading of such additional evidence would assist the Appellate Court in determining the crucial issue i.e. the date of death of Smt. Chahti. Such voter card was not before the Trial Court. Even if such document was per se admissible in evidence, in view of the facts of the present case, the petitioner should be granted a right to rebut such evidence. To hold otherwise would be against the principles of natural justice.

In view of the above, order dated 24.07.2015 is set aside. Resultantly, the petitioner shall be granted effective opportunities to rebut the additional evidence permitted to be led by respondent No.1 by the Appellate Court through its order dated 16.07.2015.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

December 13, 2018

Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No