

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 27.3.2018

CR No. 5021 of 2014 (O/M)

Shri Dharamvir Singh and another Petitioners

Versus

Manjit Kaur and others Respondents

CR No. 7410 of 2014 (O/M)

Manjit Kaur and others Petitioners

Versus

Smt. Gyan Rattan Sagar Jain and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.K. Garg Narwana, Senior Advocate, with,
Mr. Virat Amarnath, Advocate, for petitioners
in CR-5021-2014 and for respondents No. 13 and 14
in CR-7410-2014.

Mr. Rajesh Sethi, Mr. Arun Biriwal and
Mr. Pridhi Jaswinder Sandhu, Advocates,
for respondents No 1 to 3 in CR-5021-2014 and
for petitioners in CR-7410-2014.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

By this single order, I shall dispose of two connected civil revisions i.e. CR-5021-2014, titled as *Shri Dharamvir Singh and another Versus Manjit Kaur and others* and CR-7410-2014, titled as *Manjit Kaur and others Versus Smt. Gyan Rattan Sagar Jain and others*, arising out of same facts. The facts are extracted from CR-5021-2014.

The petitioners, who are defendants No. 13 and 14 in a civil suit

CR No. 5021 of 2014 (O/M), CR-7410 of 2014 (O/M)

titled as *Baljit Singh Versus Smt. Gyan Rattan Sagar Jain and others* which is suit for declaration, cancellation of sale deed dated 7.10.2004 executed by defendant No. 13 in favour of defendant No. 14 regarding land, situated at Village Mewla Maharajpur, Tehsil and District Faridabad, and for permanent injunction.

Impugned in the revision is order dated 21.7.2014 (Annexure-P-5), passed by the learned Civil Judge (Senior Division), Faridabad, vide which an application filed by plaintiff for leading additional evidence has been allowed to the effect that plaintiff has been allowed to tender document/certified copy of sale deed, which are copies of sale deed No. 8435 dated 12.11.1980, 11452 dated 19.2.1981, 12302, dated 12.3.1981, 11451 dated 19.2.1981 and copy of judgment and decree rendered in case No. 122 of 1980, titled as *Shri Nawal Kishore Versus Shri Virendra Kumar Rastogi and others*, passed by Shri L.N. Mittal, the then learned Sub-Judge, Faridabad. At the same time, the prayer for examining the plaintiff-applicant himself as a witness regarding the averments in the plaint as well as other issues framed in the suit, was dismissed. The prayer of present petitioners is that said documents cannot be allowed for additional evidence at the stage of rebuttal, particularly when the evidence of plaintiff was closed by orders.

In CR-7410-2014, petitioner has challenged the said order dated 21.7.2014 (Annexure-P-7), so far as he has not been allowed to examine himself in evidence. Also challenged is order dated 4.10.2013 (Annexure-P-4), passed by the learned Civil Judge (Senior Division), Faridabad, vide which the evidence of petitioner/plaintiff was closed by orders.

I have heard the learned counsels for the parties and have also

CR No. 5021 of 2014 (O/M), CR-7410 of 2014 (O/M)

carefully gone through the file.

In an application for additional evidence, it was stated that suit was initially filed by Sardar Baljit Singh and after his death, Mrs. Navjit Kaur and Mrs. Manjit Kaur were impleaded as party. After filing of suit, Baljit Singh remained continuously seriously ill and could not prosecute the suit seriously. As Baljit Singh was not having good health, therefore, during the pendency of suit, he appointed Shri Mankaran Singh, his daughter's son as special attorney. Mankaran Singh did not take interest in the prosecution of suit and also could not protect the interest of Sardar Baljit Singh and remained negligent through the conduct of trial. Mankaran Singh had filed his affidavit Ex.PW1/A in examination in chief on 9.10.2012, but thereafter, he never turned up for the purpose of cross examination. Now, after the death of Baljit Singh, applicant came to know about the order and on inspection of file, it comes out that said Mankaran Singh had not appeared for cross examination and copies of said documents, mentioned above, were not produced.

The order dated 4.10.2013 shows that on the said date, case was fixed for evidence of plaintiff and for payment of costs. Neither plaintiff witness was present nor costs were paid. It was observed by the Court that issues were framed on 17.12.2012 and plaintiff availed several effective opportunities, but failed to conclude the evidence. Hence, evidence of plaintiff was closed by orders. The said order was not challenged before this Court and was challenged only alongwith impugned order dated 21.7.2014 whereby the evidence of plaintiff was partly declined.

The learned senior counsel for petitioners has argued that in

CR No. 5021 of 2014 (O/M), CR-7410 of 2014 (O/M)

this case, the suit was admittedly filed in the year 2005. The matter remained pending before the Court as the plaint was rejected and later on, the same was restored by this Court. The issues were framed on 18.11.2010 after which again application under Order VII Rule 11 CPC, 1908, was filed. On 8.10.2012, Mankaran Singh was appointed as special attorney by plaintiff Baljit Singh. At least, six adjournments for evidence of plaintiff are admitted. It is stated that Baljit Singh died on 8.8.2013 and impugned order was passed on 4.10.2013. Defendants closed their evidence on 9.4.2014 and case was adjourned for rebuttal evidence when application for additional evidence was filed on 18.4.2014. The learned senior counsel for petitioners has vehemently argued that even if the evidence of plaintiff is closed by orders, additional evidence can be allowed at any stage, if it is found that same is necessary for just decision of the case.

The learned senior counsel for petitioners has relied upon the authority of Apex Court in *M/S Chakreshwari Construction Pvt. Ltd. Versus Manohar Lal*, 2017 (1) RCR (Rent), 259, wherein it was observed that additional evidence can be allowed with the leave of Court at any stage by the trial Court provided that the case is made out for such indulgence.

Another authority of Apex Court in *Union of India Versus K.V. Lakshman and others*, 2016 (3) RCR (Civil) 1019, is under Order XXXXI Rule 27 CPC, 1908, and it is claimed that in similar circumstances, additional evidence can also be taken.

The learned senior counsel has also relied upon the observations of a Larger Bench of Apex Court, consisting of Five Judges in *K. Venkataramiah Versus A. Seetharama Reddy and others*, 1963 AIR (SC) 1526, wherein it was observed as under :-

'16. In view of what the High Court has stated in this passage it is not possible to say that the High Court made the order for admission of additional evidence without applying its mind. It seems clear that the High Court thought, on a consideration of the evidence, in the light of the arguments that had been addressed already before it that it would assist them to arrive at the truth on the question of Seetharam Reddy's age if the entries in the admission registers of the School were made available. It was vehemently urged by the learned Counsel for the appellant that there was such a volume of evidence before the High Court that it could not be seriously suggested that the Court required any additional evidence "to enable it to pronounce judgment". The requirement, it has to be remembered, was the requirement of the High Court, and it will not be right for us to examine the evidence to find out whether we would have required such additional evidence to enable "us" to pronounce judgment. Apart from this, it is well to remember that the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause." There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment," it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under R-27(1) (b) of the Code.'

Further, reliance is placed upon a Single Bench judgment of this Court in *Hans Raj Versus Surinder Kaur and others*, 2010 (44) RCR (Civil) 782, wherein it was observed that merely because there is some delay or lapse on the part of a party or his counsel, there is no sufficient ground to reject the application for additional evidence even after deletion of

CR No. 5021 of 2014 (O/M), CR-7410 of 2014 (O/M)

Order XVIII Rule 17A CPC, 1908. It was observed that the Court has always inherent powers to exercise the jurisdiction for advancement of justice under Section 151 CPC, 1908.

Similar, reliance is also placed upon authority of Single Bench of this Court in *Krishan Kumar Sardana Versus Sita Ram Adlakha*, 2009 (4) RCR (Civil) 334.

The crux of said authorities is that even after provisions of Order XVIII Rule 17A have been deleted from the Code of Civil Procedure, even then the Court has inherent powers under Section 151 CPC, 1908, to allow additional evidence for the advancement of justice if the Court finds that said evidence is material and is necessary for just decision of the case.

On the other hand, the learned counsel for respondents, who are petitioners in CR-5021-2014, has stated that in the impugned order, copies of sale deeds have been allowed to be produced. It is stated that copies of sale deeds are not public documents. If it is public documents, then the certified copy of same is admissible. Therefore, same cannot be permitted to be tendered into evidence without formal proof thereof. Reliance is placed upon Single Bench authority of Madhya Pradesh High Court in *Rekha Versus Smt. Ratnashree*, 2006 (1) RCR (Civil), 685, Single Bench authorities of this Court in *Narender Nath Kapoor Versus Prem Nath Khanna and others*, 2009 (4) RCR (Civil), 515 and *Mohinder Singh Versus Krishan Lal and others*, 2009 (1) Civil Court Cases, 15.

After considering the rival contentions of both the parties and the case laws on the point, I am of the view that admittedly, provisions of Order XVIII Rule 17A have been deleted from Code of Civil Procedure, however, the inherent powers of Court under Section 151 CPC, 1908, are

CR No. 5021 of 2014 (O/M), CR-7410 of 2014 (O/M)

there to allow additional evidence if the Court finds that it is just and necessary for decision of the case and is otherwise required in the interest of justice. A balance has to be struck between the object of deletion of provisions of Order XVIII Rule 17 CPC, 1908, and inherent powers of Court under Section 151 CPC, 1908, in allowing additional evidence. The inherent powers of Court under Section 151 CPC are not to be exercised merely on the asking of the party. It depends on the facts of each case where such powers are to be exercised. The present case is pending since year 2005 i.e. almost for 13 years before the trial Court. The matter is being delayed on one or the other ground. Though, it is claimed that Baljit Singh remained ill, but fact remains that he had appointed Mankaran Singh, his daughter's son, as his special attorney, who tendered his affidavit in examination in chief. Mankaran Singh being family member was expected to pursue the case diligently. For 4.10.2013, the adjournments appears to have been granted subject to costs. On that date, neither the costs were paid nor plaintiff witnesses were present. Therefore, the trial Court was justified in closing the evidence by orders. That order was never challenged before the superior Court and was challenged in present revision only after about one year when order dated 21.7.2014 was passed partly allowing the additional evidence, but declining the plaintiff to examine himself.

I am of the view that interest of justice does not require that plaintiff, who has failed to examine himself and whose evidence is closed by orders for non payment of costs and non production of evidence, may come at any stage and state that he wants to lead additional evidence and examine himself when the case is fixed for rebuttal evidence. The

CR No. 5021 of 2014 (O/M), CR-7410 of 2014 (O/M)

-8-

trial Court was justified in not reopening the case to allow the examination of plaintiff. Therefore, said relief was rightly declined by trial Court, vide impugned order dated 21.7.2014.

So far as production of copies of sale deeds, mentioned above, and copy of judgment and decree are concerned, copy of judgment and decree is per se admissible. So far as copies of sale deeds are concerned, these were mentioned in para-1 of the plaint saying that plaintiff had purchased the land through said sale deeds in the name of M/s Haryana Country Farm Housing Society as its sole promoter. In the written statement, defendants did not denied the execution of sale deeds. In these circumstances, trial Court was justified in allowing the production of copies of sale deeds. However, it is always subject to just objection that may be raised by opposite party regarding its mode of proof which is to be decided by trial Court and not by this Court.

In view of foregoing discussion, I do not find any illegality or infirmity in impugned order dated 4.10.2013 as well as in impugned order dated 21.7.2014. Therefore, both the orders are affirmed. Consequently, both civil revisions are dismissed. Since both cases are dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

27.3.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No