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

**Civil Revision No.5144 of 2017
Date of Decision: 04.07.2018**

PARKASH KAUR

.....Petitioner

Vs

JAGIR SINGH AND ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Akhilesh Vyas, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 27.03.2017 passed by the Civil Judge (Jr. Divn.) Ajnala vide which prayer for leading additional evidence in the form of original sale deed dated 16.01.2004 was declined.

[2]. Perusal of record would show that notice of motion in the present revision petition was issued on 29.11.2017. As per office report respondents have been duly served. However, there is no representation on their behalf since the date of effecting service. Faced with the situation, this Court is left with no option except to decide this revision petition on merits.

[3]. Brief facts are that in a suit for partition by metes and bounds, the petitioner being defendant No.1 was proceeded against *ex parte* and a preliminary decree was drawn. Proceedings in respect of passing of final decree are still pending. Petitioner has already moved an application under Order 9 Rule 13 CPC for setting aside the *ex parte* preliminary decree. The said application is also pending before the trial Court.

[4]. Application for leading additional evidence was filed on the ground that vide the sale deed dated 16.01.2004, the plaintiff himself sold 14 *Marlas* of land to defendant No.7/petitioner and thereafter filed the suit for partition by metes and bounds.

[5]. Learned counsel for the petitioner submitted that the sale deed in question would enhance the entitlement of the petitioner and would reduce the entitlement of plaintiff in the joint land. The sale deed in question would go to the roots of the case, therefore, production of the same will be relevant for adjudication of the rights of the parties.

[6]. Learned counsel by relying upon **Parminder Singh vs. Manjit Singh & Ors., 2015(7) R.C.R. (Civil) 918** contended that the additional evidence sought to be produced would be

relevant for real adjudication of rights of the parties as the sale deed has materially effected the entitlement of the plaintiff and would enhance the share of defendant No.7/petitioner.

[7]. I have considered the submissions made by learned counsel for the petitioner.

[8]. The test for granting indulgence for leading additional evidence is only to see that the document in question is just and essential for real determination of the controversy between the parties. For any lapse on the part of the petitioner, the opposite party can best be compensated with adequate cost. Cause of justice cannot be sacrificed merely on the ground of any delay in producing the document.

[9]. In view of facts and circumstances of the case, I deem it appropriate to allow defendant No.7/petitioner to adduce additional evidence in the form of original sale deed dated 16.01.2004 executed by the plaintiff himself thereby transferring 14 marlas of land in favour of the petitioner. The effect of additional evidence would be tested by the trial Court at the relevant stage.

[10]. Consequently, impugned order dated 27.03.2017 passed by the Civil Judge (Jr. Divn.) Ajnala is set aside. This revision petition is allowed, however subject to payment of

Rs.15,000/- as costs to be paid to the plaintiff. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

July 04, 2018

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No