IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 129 CR-5577-2018

Date of decision : 27.08.2018

Dulichand (since deceased) through LR ..... Petitioner

VERSUS

Dharmpal and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sanjay Mittal, Advocate, for the petitioner.

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DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 07.08.2018, passed by the Additional Civil Judge (Senior Division), Narnaul (for short, the Trial Court) through which an application filed by the petitioner to adduce additional evidence has been rejected.

The facts in brief which have been culled out after hearing learned counsel for the petitioner as also on perusal of the record are that in the year 2015 the predecessor-in-interest of the petitioner filed a suit seeking therein permanent injunction to restrain the respondents, who were the defendants in the suit, from creating any obstruction in the user of the petitioner/plaintiff over a common chowk which is situated towards the eastern side of the petitioner's house. The respondents were further sought to be restrained from creating any hindrance in the enjoyment and ingress or egress of the petitioner over any part of the common chowk as also from blocking/obstructing the gate, windows and ventilators etc. of the petitioner's house which were having an opening towards the aforesaid common chowk.

After both the parties had concluded their respective evidence, the petitioner filed an application seeking therein to adduce additional

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evidence in the form of statement of one Rohtash as suffered by him in an earlier suit titled as “Tek Chand vs. Yad Ram” wherein he had stated that he would not obstruct the common chowk. A copy of the plaint in Tek Chand's suit as also a copy of the order dated 14.09.2004 through which Tek Chand had withdrawn his suit were also sought to be adduced as additional evidence.

Admittedly, reference to Tek Chand's suit had been made by the plaintiff in his plaint. Thus, the plaintiff-Dulichand (now represented through his legal representatives including the petitioner) was well aware of Tek Chand's suit and presumably all proceedings that took place in that suit even before he filed his suit. That being so, after both the parties have led their respective evidence and thus the respondents have exposed their entire case, the petitioner cannot be allowed to adduce additional evidence pertaining to facts which the plaintiff was admittedly aware of even prior to the filing of the suit especially when it is not disputed that the petitioner/plaintiff was given adequate opportunities to lead his own evidence.

In view of the above, no merit is found in the present petition.

Dismissed.

27.08.2018 [DEEPAK SIBAL]
shamsher JUDGE

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

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