

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6115 of 2017 (O&M)

Date of decision: 19.04.2018

Duni and another

...Petitioners

V/s.

Bimla Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Sanjiv Gupta, Advocate for the petitioners.

Mr. Rajesh Sethi and Mr. Arun Beriwal,
Advocates for respondent No. 1.

KULDIP SINGH, J. (Oral)

The impugned in the present revision is to the order dated 22.08.2017 passed by learned Additional District Judge, Sirsa vide which while hearing the civil appeal titled Bimla Devi V/s. Shiv Narain and others, an application filed by the plaintiff for additional evidence under order XLI, Rule 27 read with Section 151 of CPC was allowed.

I have heard learned counsel for the parties and perused the case file carefully.

Perusal of the impugned order shows that an application was filed by the plaintiff-respondent herein that she could not produce some documents mentioning in the said application which are necessary for decision of the appeal. The respondents have taken the stand that the documents were within the knowledge of the plaintiff, therefore, at this stage cannot be allowed. The learned Additional District Judge took a view that plaintiff has filed the suit seeking decree for declaration that she be declared owner in possession to the extent of her share as the suit property in question is ancestral property because Amra was ancestor to the parties to

the appeal and mutation of inheritance of Amra was entered vide mutation No. 632 dated 20.04.1939 in favour of Udmi and after the death of Udmi, the property in question was inherited by Shiv Narain, father of the plaintiff and it came in her share in a family settlement. The Lower Appellate Court also noticed that the suit was dismissed on the ground that plaintiff could not prove the factum of family settlement and she also could not adduce any evidence that the land in dispute was ancestral property. The learned Court after considering the application, has taken into consideration the plea of the respondents that documents were in existence prior to the filing of the suit but it took the view that the documents are necessary for the just and proper adjudication of the controversy involved in the present appeal. Hence documents except documents on file i.e. copy of the jamabandi for the year 1926-1927 are allowed to be produced subject to cost of Rs.5,000/-.

Learned counsel for the petitioner has relied upon the authority of Hon'ble Supreme Court of India titled as ***'Lekhraj Bansal V/s. State of Rajasthan and another' 2015(4)SCC (Civil) 480***. The pleading of the said authority shows that application for additional evidence was dismissed on the ground that the birth certificate was within the knowledge of the party. Yet in another case ***'State of Rajasthan V/s. T. Sahani' 2001(2) R.C.R. (Civil) 419***, hon'ble the Supreme Court took the view that it is entirely for the Court to consider at the time of hearing the appeal on merits as to whether the documents sought to be filed and additional evidence need to be looked into for pronouncement of judgment in a very specific manner? Learned counsel for the petitioner has also relied upon the authority of Hon'ble Supreme Court of India titled as ***'K. Venkataramiah V/s. A. Seetharama Reddy and others' 1963 AIR (SC) 1526***. I am of the view that

the situation in the present case is different. Order XLI, Rule 27 lays down as under:-

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.”

Clause (b) of sub Rule 1 makes it clear that if the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce any judgement or for any substantial cause, the appellate Court may allow any document to be produced or any witness to be examined. Here the Lower Appellate Court while hearing the appeal found that such documents are necessary to do substantial justice between the parties. Once the lower Appellate Court has recorded the satisfaction, this Court is of the view that this Court should not interfere in the discretion exercised by lower Appellate Court. In this case it is not that the plaintiff

wants to produce the documents but the Court also requires it for doing substantial justice between the parties. There is no ground to interfere in the impugned order. Dismissed. Needless to say that opposite party shall be given opportunity to lead the rebuttal.

In view of the above, the petition is dismissed.

Since the main petition has been dismissed, the miscellaneous application pending, if any, stands disposed of.

(KULDIP SINGH)
JUDGE

19.04.2018
Divyanshi

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