IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.116

C.R. No.6352 of 2018 (O&M)
Date of decision: 21.09.2018

Francis Victor ....Petitioner

versus

Barkat Masih @ Kala Masih (now deceased) through his LRs ....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 05.09.2018 passed by the Civil Judge (Junior Division), Ajnala (for short – 'the Trial Court') through which an application filed by the petitioner seeking therein to lead additional evidence has been dismissed.

After hearing learned counsel for the petitioner as also perusing the record the essential facts which have been culled out are that way back in the year 2014, the petitioner filed a suit seeking therein specific performance of an agreement to sell dated 07.03.1988 allegedly executed between the predecessor-in-interest of the respondents and the petitioner. Alternative prayer for recovery of damages and relief of permanent injunction to restrain the respondents from alienating the suit property by

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way of sale, mortgage, exchange etc. as also dispossessing the petitioner were also made. On being put to notice, the respondents appeared before the Trial Court and filed their written statement denying the claim set up by the petitioner. On 08.12.2014, the Trial Court framed issues on which by 23.05.2016, the petitioner led his entire evidence and on 11.09.2017, the respondents led their entire evidence. Thereafter, when the matter was posted for rebuttal evidence, if any, and final arguments, the petitioner filed an application seeking to produce additional evidence in the form of examination of one Vijay Kumar Mannan, Stamp Vendor, Tehsil Compound Complex, Ajnala alongwith record of the register being maintained by the aforesaid Vijay Kumar Mannan pertaining to the relevant year i.e. 1988. Such application was dismissed by the Trial Court occasioning the filing of the present petition.

Learned counsel for the petitioner has been heard.

Way back in the year 2014, the petitioner had filed his suit seeking therein specific performance of agreement dated 07.03.1988 in which the Trial Court framed issues on 08.12.2014. Thereafter, the petitioner as well as the respondents closed their evidence on 23.05.2016 and 11.09.2017 respectively. At the fag end of the trial, the petitioner filed the present application seeking therein to produce additional evidence.

It is not disputed that adequate opportunities were granted to the petitioner to lead his evidence in the affirmative. However, the evidence which is now sought to be produced as additional evidence was not produced by him at that time.

The reason given by the petitioner for having not produced the Stamp Vendor namely Vijay Kumar Mannan at the stage when the petitioner

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was leading his evidence in the affirmative is that it is only now that he could locate the aforesaid Stamp Vendor. In a suit for specific performance of an agreement to sell, the evidence of a Stamp Vendor is crucial. Therefore, in a small place like Ajnala where there would be very few Stamp Vendors, to produce such crucial evidence, if the petitioner would have exercised due diligence, he would have certainly located the relevant Stamp Vendor at the time when he was leading his evidence in the affirmative. Thus, the story set up by the petitioner does not appear to be plausible.

In view of the above, it can safely be assumed that through the additional evidence sought to be produced by the petitioner at the fag end of the trial, he only seeks to fill up the lacuna left in his case which cannot be permitted.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 21, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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