

(118) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6931 of 2018
Date of decision:11.10.2018

Kashmiri Lal

.... Petitioner

Versus

State of Haryana and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Arvind Rajotia, Advocate for the petitioner.

B.S. Walia, J.

[1] Application for permission to lead secondary evidence of drawing No.782/70 (H) dated 27.11.1970 moved by the petitioner/plaintiff was dismissed by the learned Civil Judge (Jr. Div.), Hisar vide order dated 01.10.2018.

[2] Petitioner/plaintiff had filed the suit on 10.05.2006. Issues were framed in the same on 25.08.2008 while status quo order was granted to the petitioner/plaintiff on 13.05.2006. The application for leading secondary evidence was opposed on the ground that the petitioner/plaintiff was required to prove his case by leading evidence in affirmative for which he had availed various effective opportunities to conclude evidence and eventually, the same was closed vide Court order dated 13.01.2011 whereafter defendant Nos.1 to 3 closed their evidence on 21.03.2011 while evidence of defendant Nos.4 to 6 was closed by Court order dated

21.03.2011. Thereafter, after availing various effective opportunities on the

pretext of rebuttal evidence, the petitioner/plaintiff moved an application for leading additional evidence for 16.09.2011 which was dismissed vide order dated 01.10.2012 and revision petition against the same was also dismissed vide order dated 22.02.2018. The case was thereafter again fixed for rebuttal evidence whereupon application for permission to lead secondary evidence was filed on 25.07.2018.

[3] The civil suit has been filed for a permanent injunction for restraining the Government from converting 24 feet wide road and open space left for parking of inhabitants as per details in layout plan map No.782-70 dated 27.11.1970.

[4] The petitioner in his evidence summoned the relevant drawing of the abovesaid layout plan but the same was reported to have been misplaced while being presented in another complaint case titled Lajwanti v. Dy. Commissioner. However, copy thereof was tendered as Mark-P1 by the official witness namely Fakir Chand, Assistant Draftsman, Office of DTP, Hisar who also brought the copy prepared by tracing Ex.D1 and placed the same on record during the course of his cross-examination way back on 20.01.2009. The file of case titled as Lajwanti v. Dy. Commissioner was also summoned by the petitioner/plaintiff and the plaintiff attempted to prove the site plan forming part of record in its file by way of testimony of PW-2 Balwant Singh, Retd. Naib Tehsildar (Sales). Thereafter, the petitioner/plaintiff examined PW-3 Dalbir Singh, Clerk, Office of Tehsildar (Sales), Hisar who placed on record the site plan Mark-‘B’ available as per record. Thereafter, PW-4 was examined with respect to proof of documents sought through RTI. The petitioner/plaintiff also made an attempt to call the original record pertaining to drawing of map No.782-70 dated

27.11.1970 by calling Raj Kumar, Head Draftsman, PWD (B&R) i.e. PW-5 who testified on oath before the Court that the original record of the abovesaid map was not available. Application for additional evidence was moved at the fag end of the case at the time of rebuttal evidence contending that the original map be called which, as has been noticed above, was dismissed vide order dated 01.10.2012 in view of the statement suffered by the official of the department that the original drawing was not available. Revision petition filed against the order dated 01.10.2012 was also dismissed. Thereafter, the instant application was filed for secondary evidence.

[5] I have considered the submissions of learned counsel for the petitioner but am of the view that the impugned order does not warrant interference since shortly after the institution of the civil suit in the year 2006, it was to the notice of the petitioner/plaintiff that the original record was not available despite various attempts having been made to call the same. Thus, it was not beyond the control of the plaintiff from leading evidence in affirmative. Whatever drawing No.782/70 (H) dated 27.11.1970 forms part of the record already stands exhibited as Ex.D1 as was duly attested by the DTP Hisar. The source of the alleged secondary evidence has also not been disclosed in the application moved for this purpose. Apparently, moving of the application in the light of the position as noted above on 25.07.2018 when the case was again fixed for rebuttal evidence is nothing except a dilatory tactic by the petitioner/plaintiff after having obtained an order of status quo way back on 13.05.2006. The petitioner had ample time to move the application over the years and now cannot be allowed to fill up the lacunae at the fag end of the case.

[6] Accordingly, finding no merit in the revision petition, the same is dismissed.

(B.S. Walia)
Judge

11.10.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No