

120

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

**CR No.7776 of 2017
Date of Decision : 20.12.2018**

Ashwani Kumar

...Petitioner

Versus

Devinder Mohan and another

....Respondents

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

Present: Mr. Arvinder Arora, Advocate
for the petitioner.

Mr. Gurmeet Singh, Advocate
for respondent No. 1.

B.S.WALIA, J. (Oral)

1. Revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 21.10.2017 (Annexure P-8) passed by the learned Civil Judge (Junior Division), Ambala in Civil Suit No. CS/9436/13 whereby application moved by the petitioner-plaintiff for permission to lead additional evidence to produce and prove agreement/compromise dated 30.04.1998 (Annexure P-9) was dismissed.

2. Brief facts of the case relevant for the adjudication of the instant case are that a suit for permanent injunction was filed by the petitioner-plaintiff against the respondent-defendants for restraining them from interfering in the peaceful possession of the plaintiff over the suit property i.e. dwelling house on the ground that the property in question was purchased by him though it was registered in his fathers' name and that his father had executed an agreement dated 30.04.1998 in his favour transferring the suit property in favour of petitioner-plaintiff. Although the agreement dated 30.04.1998, executed by the petitioner-plaintiff's father was

referred to in the pleadings of the suit, however, the same was not produced at the time of leading evidence in affirmative. The petitioner-plaintiff examined Maya Ram-PW1 as well as Umrao Singh-PW2 and also examined himself as PW3 and all three plaintiffs' witnesses categorically deposed that the suit property which was purchased by the petitioner in the name of his father was transferred by the petitioners' father in the name of the petitioner by way of agreement dated 30.04.1998. However, at the rebuttal stage, an application was moved by the petitioner-plaintiff for permission to lead additional evidence of agreement dated 30.04.1998 on the ground that the said document was not traceable earlier and, with great difficulty, had been recovered from his mother and since the same was essential for the just adjudication of the case, therefore, the same be permitted to be produced on record by way of additional evidence. In reply, production of compromise dated 30.04.1998 was opposed on the ground that the application was a misuse on the process of law since the alleged compromise dated 30.04.1998 was already to the knowledge of plaintiff and nothing has been mentioned in the suit that the alleged compromise was not in his possession. The application was dismissed by the learned Civil Judge (Junior Division), Ambala on the ground that at the stage of rebuttal of evidence only a new document for such evidence could be produced which would rebut the evidence given by the defendant and it had not even been explained by the plaintiff as to why the document was being produced at this belated stage.

3. Learned counsel for the petitioner contends that the impugned order is legally unsustainable since the additional evidence can be led at any stage of the suit which would be essential for the just adjudication of the case and which could not be led earlier on the ground of circumstances beyond the control of the party seeking to lead additional evidence. Learned counsel contends that the petitioner

had categorically mentioned in the application (Annexure P-6) that the document could not be placed on record because the same was not in the custody of the petitioner-plaintiff and it was only with great efforts of the petitioner-plaintiff and his relatives that the document was retrieved from his mother on 16.11.2016 when she gave it to his wife, that the said document was necessary to produce on record for resolving the controversy in issue.

4. On the other hand, learned counsel for the respondents has reiterated the reasoning for the passing of the impugned order and stated that in case, the Court was inclined to allow the revision petition, the same be made subject to payment of costs besides giving opportunity to the respondent-defendant in respect of the document to be produced by the petitioner-plaintiff.

5. I have considered the submissions of learned counsel for the parties.

6. No doubt, in the plaint, it had not been mentioned that the compromise agreement dated 30.04.1998 was not in the possession and power of the plaintiff and nor was any application moved before the closure of the evidence of the plaintiff, however, the petitioner-plaintiff has examined PW1 and PW2, namely, Maya Ram and Umarao Singh, who have categorically stated that the petitioner-plaintiff had purchased the suit property in the name of his father who had executed the compromise agreement dated 30.04.1998 transferring the property in the name of the petitioner.

7. Learned counsel for the petitioner relied upon the decision of this Court in ***United India Insurance Limited Versus Ranjit Kaur; 2001(1) PLR 360, Punjabi University, Patiala Versus Mani Singh Suri; 1998(3) PLR 838*** and ***Jug Lal Versus Naresh Kumar; 1999 CivCC 795*** in order to contend that additional evidence should be allowed in order to resolve the question in controversy and that permission to produce the additional evidence on record,

should not be denied on technical grounds, that rules of procedure are mere handmaid of administration of justice meant to advance justice and not to thwart justice, if material evidence is brought to the notice of the Court, the Court should not shut its eyes to it and should allow material evidence to be furnished before it so that justice is done to the parties. In view of the fact that the petitioner seeks to produce the compromise deed dated 30.04.1998 on record in respect of which he had already examined PW1 and PW2 and as has also examined himself as PW3 and the same is essential for the just adjudication of the case as set up by the petitioner-plaintiff of his having purchased the property in question though it was purchased in the name of his father who had subsequently transferred the suit property vide compromise agreement 30.04.1998 to him, therefore, to meet the ends of justice, the petitioner is allowed to produce the compromise deed dated 30.04.1998 on record by way of additional evidence subject to payment of costs of ₹ 15,000/- to the respondent-defendant.

8. In the light of the position as noted above, the revision petition is allowed. Impugned order dated 21.10.2017 is set aside. The petitioner-plaintiff is allowed to produce the compromise deed dated 30.04.1998 on record subject to payment of costs of ₹ 15,000/- to the respondent.

9. Trial Court would grant one effective opportunity to the defendant-respondent to cross-examine plaintiff witnesses or lead any other evidence, in respect of the document allowed to be produced on record in accordance with law.

20th December, 2018

shabha

(B.S.WALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No