

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

Sr. No.231

CR-8333-2017

Date of decision: 31.10.2018

Gurukul Indraprastha Managing Committee Petitioner

versus

Sanjeev Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ashwani Bakshi, Advocate
 for the petitioner.

 Mr. Kul Bhushan Sharma, Advocate
 for the respondent.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 17.11.2017 passed by the Civil Judge (Junior Division), Faridabad (for short- 'the Trial Court'), through which an application preferred by the petitioner for leading additional evidence has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that on 08.12.2014, the petitioner filed a suit seeking therein a direction to the respondent, who was the defendant in the suit, to vacate the property which was detailed and described in the plaint (for short – 'the suit property') as according to the petitioner, the respondent was encroaching upon the petitioner's property.

Mesne profits for the illegal use and occupation of the suit property from the date of its possession till its vacation were also claimed. On being put

to notice, the respondent appeared before the Trial Court and filed his written statement through which he denied the claim set up by the petitioner. The Trial court then framed issues on which the petitioner/plaintiff led evidence and closed the same on 14.08.2017. During the course of leading such evidence, the petitioner produced on record as Ex.P-10/A to Ex.P-10/D a report dated 21.05.2017 (alongwith supporting documents) by the Halqa Girdawar of the area wherein the suit property was situated. Since such documents had been produced through one of the plaintiffs witnesses and not through the author of the report, which was the Halqa Girdawar, soon after the petitioner's evidence was closed an application was moved on his behalf to lead additional evidence in the form of production of Halqa Girdawar with an attempt to prove the aforesaid report and documents already exhibited as Ex.P-10/A to Ex.P-10/D. The Trial Court rejected the petitioner's application primarily on the ground that the petitioner had already availed of many opportunities for production of its evidence and that the additional evidence sought to be produced by the petitioner was an attempt to fill up lacuna in its case as also for the reason that in its plaint, the petitioner had referred to an earlier demarcation report which the petitioner did not produce. Such order by the Trial Court is the subject matter of challenge in the present proceedings.

Learned counsel for the parties have been heard.

Through its suit, the petitioner seeks the respondent to vacate that part of its property which according to it has been encroached upon by the respondent. In response, the respondent not only denies the petitioner's case but further asserts that whatever construction has been made by him is on the property which is under his ownership and possession. Thus, the

issue as to whether the construction made by the respondent is on the land owned by the petitioner or on his own land is core to the decision of the petitioner's suit. The demarcation of the suit property is thus necessary and with an attempt to arrive at the truth, the petitioner has already exhibited through one of its witnesses a demarcation report by a revenue official. However, such report and its accompanying documents would virtually be worthless without its author having stepped into the witness-box to prove its contents as also the circumstances/procedure adopted by him before arriving at the conclusions so arrived by him in his report. That is exactly what the petitioner seeks to do by way of leading of additional evidence.

It is true that the petitioner was given sufficient number of opportunities to lead its evidence and normally thereafter no further opportunity should be granted to a litigant to lead additional evidence. However, in view of the above facts of his case where this Court is of the definite view that the contents of the demarcation report which is sought to be proved through leading of additional evidence would go to the root of the matter and would assist the Trial Court in reaching a just and proper decision, this Court has no hesitation in permitting the petitioner to lead such additional evidence especially when the same is sought to be led through an application filed soon after the petitioner had closed its evidence and that it would not prejudice the respondent as he would be given adequate opportunity to cross-examine the witness sought to be produced by the petitioner as also for the reason that such demarcation report has been authored by a revenue official against whom no mala fides have even been alleged.

In view of the above, after setting aside the impugned order, the petitioner is permitted to lead additional evidence in the form of production of the Halqa Girdawar, who is said to be the author of the report Ex. P-10/A as also its supporting documents Ex.P-10/B to Ex.P-10/D. The needful be permitted to be done by the Trial Court within 15 days from the date of receipt of a certified copy of this order.

The present petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

October 31, 2018
Jyoti 1

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