

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8741 of 2017

Date of decision : May 24, 2018

Gurdip Singh

..... Petitioner

Versus

Mohinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Satbir Rathore, Advocate
for the petitioner.

Mr. A. S. Manaise , Advocate
for the respondents.

AMIT RAWAL, J (oral).

The present revision petition is directed against the order dated 28.11.2017 (Annexure P-6) whereby the application submitted by the petitioner-plaintiff for recalling of the PW-2-Nasib Singh, Naib Sadar Kanungo, DC Office, Hoshiarpur has been dismissed.

Learned counsel appearing on behalf of the petitioner submitted that the suit aforementioned claiming declaration that the alleged transfer deed No. 1379 dated 16.8.2011 executed by defendant No.1-Mohinder Singh in favour of defendant Nos. 2 and 3 was illegal null and void and the plaintiff had right by birth as the nature and character of the property is ancestral. In order to prove such pleadings, PW-2 Nasib Singh, Naib Sadar Kanungo, DC office, Hoshiarpur was summoned who had brought the original excerpt/Intkhab, when he was examined in examination-in-chief on 26.5.2017 but his cross-examination was deferred

and when he appeared on 4.7.2017, on a specific question in the cross-examination he stated that he did not bring the original record of the excerpt which is in urdu and had been translated into Punjabi. It is in that background that the application was submitted but the court below has dismissed the same, thus, urges this Court that no harm would be caused to the respondents if the aforesaid PW is recalled. Rather, it will be helpful in adjudication of the *lis* on the issue with regard to the dispute whether the property is ancestral or not.

Learned counsel appearing on behalf of the respondents submitted that the application was filed at the stage when the suit had ripened for arguments and Order 18 Rule 17-A CPC had already been omitted in the year 2002, rightly so, the court below had dismissed the application. Such an exercise should have been done before closing of the evidence.

I have heard learned counsel for the parties, appraised the paper book. While issuing notice of motion on 13.12.2017 this Court had passed the following order:-

“Heard.

Notice of motion for 09.03.2018 to respondents No.1 to 3.

The petitioner shall deposit an amount of Rs.20,000/- in the Registry towards litigation expenses to be paid to the respondents subject to outcome of the present petition. Notice to respondents No.1 to 3 would be issued only after necessary deposit within a period of 15 days. Thereafter, the proceedings shall carry on in the meantime but passing of the final order shall remain stayed.”

The petitioner had already deposited a sum of ₹20,000/- with the Registry of this Court. It would be apt to reproduce extract from the statement of Nasib Singh, Sadar Kanungo in examination-in-chief and cross examination respectively as under:-

“Stated that I am posted as Sadar Kanungo in DC Office, Hoshiarpur. Today I have brought original intkhab/Excerpt in Court. This record which I have brought is true and correct as per original. I do not know Urdu language. I have got Urdu record translated into Punjabi from some other persons which is true and correct as per record.

Cross examination:

I have not brought original record in Court. When I had produced original mutation in court, on that day I had not brought original record. I do not know the parties personally. I do not know Urdu.”

Concededly, examination-in-chief of the aforementioned witness PW-2 was recorded on 26.5.2017 and cross-examination was held on 4.7.2017 but the application for additional evidence was filed on 6.11.2017 i.e. after five months.

In view of the above, finding of the court below dismissing the application that there shall be no end to the litigation and the parties shall be made suffer and every time if witness is examined on some point other party would move an application for additional evidence to fill up the lacuna is not sustainable much less fallacious, for, the court had not deliberated upon the fact that adjudication of the suit is based upon nature and character of the property being ancestral and bringing on record the original excerpt which is a condition precedent for proving the nature and

character of the property.

In view of the above, I am of the view that the court below ought to have adopted the approach in a pragmatic and fair manner. The impugned order is not sustainable in the eyes of law and is hereby set aside.

Accordingly the revision petition stands allowed.

The amount of ₹20,000/- deposited by the petitioner is ordered to be given to the respondents against a valid receipt.

(AMIT RAWAL)
JUDGE

May 24, 2018
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Whether speaking/reasoned	Yes
Whether Reportable	Yes/No