

CR Nos.2071 and 1458 of 2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 11.01.2019

1. CR-2071-2017 (O&M)

Prem Chaudhary

... Petitioner

Versus

Takdir Singh

... Respondent

2. CR-1458-2017 (O&M)

Takdir Singh

... Petitioner

Versus

Prem Chaudhary

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Saurav Kanojia, Advocate
for the petitioner in CR-2071-2017 and
for the respondent in CR-1458-2017.

Mr. Sudhanshu Makkar, Advocate
for the petitioner in CR-1458-2017 and
for the respondent in CR-2071-2017.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two petitions bearing **CR**
No.2071 of 2017 titled as **“Prem Chaudhary V/s Takdir Singh”** at the
instance of the plaintiff against the order of the lower Appellate Court,
whereby the first application under Order 41 Rule 27 of the Code of Civil

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Procedure, has been allowed in part and remaining three applications being similar in nature have been dismissed and other **CR No.1458 of 2017** titled as **"Takdir Singh V/s Prem Chaudhary"** filed at the instance of the defendant against the same very order, whereby the first application for additional evidence in part has been allowed.

The plaintiff instituted the suit for specific performance of the agreement to sell dated 31.08.1999 in respect of the suit land. The suit was filed on 28.03.2000 as the target date was 31.01.2000. The evidence of the plaintiff was closed on 10.04.2002. When the case was slated for defendant's evidence, an application was submitted by the defendant for examination of the signatures on the agreement to sell through an Expert, which was allowed and Expert submitted his report, wherein it was submitted that signatures of Takdir Singh/defendant/petitioner had been traced. The trial Court by relying upon the same report dismissed the suit. However, at the appellate Stage, the plaintiff submitted four application, first application pertained to examination of Handwriting Expert on the premise that the defendant wanted to amend written statement by explaining the use of blank papers having signatures to be traced papers, which was denied and the valuation report to establish that the rate agreed in the agreement to sell prevailing at the relevant stage and the other various prayers i.e. for bringing on record the letter of Municipal Committee, Jhajjar, report of metrological department, certain other documents with regard to the transfer of Dilbag Singh, who was in the Government job. As regards the fourth application, the plaintiff wanted to place on record the statement dated 10.03.2004 and cross-examination of 2006 in a Civil Suit No.352 of 2002 filed by Takdir Singh/defendant, challenging the

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proceedings allegedly suffered in favour of Dilbag Singh, husband of the plaintiff-Prem Chaudhary, which has been dismissed.

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. Saurav Kanojia, learned counsel appearing on behalf of the petitioner-plaintiff in CR-2071-2017 and for the respondent in CR No.1458 of 2017 submitted the lower Appellate Court though had granted the permission to examine expert by declining the other documents i.e. Collector's rate, M.C. Letter and metrological department report as well as the statements, but the same are essential and necessary for the adjudication of the *lis*, for, in the suit filed by Takdir Singh/defendant, he denied that there was a separation amongst the brothers in 1989, though in the suit for specific performance, there was a categoric admission. It was further contended that the plaintiff though had moved an application for examination of the Expert in the month of May 2002, but the report came only on 30.09.2002, when the trial Court had already decided the suit, therefore, due diligence was conspicuously wanting.

Mr. Sudhanshu Makkar, learned counsel appearing on behalf of the petitioner-defendant in CR-1458-2017 and for the respondent in CR No.2071 of 2017 submitted that the additional evidence allowed by the lower Appellate Court tantamounts to filling up the lacuna as the agreement to sell was emphatically denied. The aforementioned evidence could have been led while leading in evidence in affirmative and it tantamounts to lead evidence in rebuttal at the appellate stage, which is not permissible in the eyes of law. There is no relevancy of the statements relied upon by the plaintiff in a different suit sought to be produced as an additional evidence.

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I have heard learned counsel for the parties, appraised the paper book and of the view that the other documents i.e. Collector's rate, M.C. Letter, metrological department report, would have no relevancy in a suit claiming specific performance of agreement to sell. The lower Appellate Court, in my view, though partly allowed the application by granting the permission to examine the Handwriting Expert as the plaintiff could not rebut the report of the defendant, particularly when amendment application for changing the stand in the written statement was disallowed. The Collector's rate would be essential and necessary for the adjudication of *lis* particularly, stand taken the written statement.

As regards the statements, in my view, has no relevancy, for, the trial had reached the stage of evidence already brought on record whatever the admission at the instance of the defendant can always be referred to at the appropriate stage, when the appeal is ripe for arguments.

With the aforesaid observations, the Civil Revision Petitions are disposed of.

Original record be sent back.

Anything observed in this order shall not construed as an expression on merits and demerits of the pending suit.

11.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**