

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 206

CR-3080-2017

Date of decision : 01.10.2019

Charanjeet Kaur

..... Petitioner

VERSUS

Jarnail Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. N. K. Manchanda, Advocate, for the petitioner.

Mr. Rajesh Bansal, Advocate, for
Mr. Ashish Gupta, Advocate, for respondents No.1 to 4, 6 and 7.

None for respondent No. 5.

Mr. Madan Bhandari, Advocate, for respondents No. 8 to 10.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 20.03.2017, passed by the Civil Judge (Senior Division), Moga (for short, the Trial Court), dismissing an application filed by the petitioner to lead additional evidence in the form of production of a Draftsman to prove the site plan attached with the petitioner's plaint.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner, alongwith respondents No. 11 to 13, filed a suit seeking therein joint possession of land measuring 10 marlas detailed and described in the head note of the plaint (for short, the suit property). *Inter alia*, the case set up by the petitioner/plaintiffs was that the suit property was earlier owned and possessed by one Mehar Singh and after he died he left the same to his two sons Sarwan Singh and Raghbir Singh who during their lifetime remained in possession of the same as its owners. On the death of Sarwan Singh, respondents No. 11 and 12, being sons and respondent No. 13, being grandson of Sarwan Singh, succeeded to his property to the extent of 3/8th share. The petitioner being daughter of Sarwan Singh inherited 1/8th share of the same. On the death of

Raghubir Singh, respondents No. 8 to 10 succeeded to his share in the suit property.

Respondents No. 1 to 7 were alleged to have encroached upon the suit property in the aforesaid suit filed by the petitioner alongwith respondents No. 11 to 13.

On being put to notice, respondents No. 1 to 7 appeared before the Trial Court and filed two separate written statements. One was by respondents No. 1 and 2 and the other by respondents No. 3, 4, 6 and 7. In both the written statements the dimensions of the suit property as given by the petitioner were disputed.

The Trial Court framed issues on which both parties led their respective evidence and when the matter was fixed for rebuttal evidence, if any, the petitioner filed an application seeking therein to produce additional evidence in the form of a Draftsman to prove the site plan of the suit property as attached by her with her plaint. The Trial Court rejected such application on the ground of delay as also for the reason that such evidence should have been led by her at the time of leading of her evidence in the affirmative. Such order of the Trial Court is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

It is true that in their respective written statements respondents No. 1 to 4 and respondents No. 6 and 7 had disputed the dimensions of the suit property and therefore, ordinarily, the petitioner should have proved the site plan attached by her with her plaint while leading her evidence in the affirmative. However, in the peculiar facts of the present case, the same should have been permitted by the Trial Court as in the light of the dispute with regard to the boundaries and situation of the suit property such evidence would only assist the Trial Court in arriving at a just decision as such evidence goes to the root of the dispute between the parties. The contesting respondents would also not be put to any prejudice as they would not

only have the right to cross examine the Draftsman/witness to be produced by the petitioner to prove her site plan but also to lead evidence in rebuttal.

In view of the above, subject to payment of ₹20,000/- as costs, to be paid by the petitioner to respondents No. 1 to 4 and respondents No. 6 and 7 the impugned order is set aside and the petitioner is allowed to lead additional evidence as prayed for by her. Costs have been imposed upon the petitioner for the delay on her part.

Since the petitioner's suit is pending for the last about nine years, it is directed that with regard to leading of additional evidence the Trial Court shall grant two effective opportunities to the petitioner to lead her additional evidence and two effective opportunities to the respondents to lead evidence in rebuttal and that the petitioner's suit shall be disposed of within four months from the date of receipt of a copy of this order.

The present petition is allowed in the above terms.

The Trial Court shall ensure that the awarded costs are transferred in the accounts of respondents No. 1 to 4 and respondents No. 6 and 7.

01.10.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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