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

CR-8230-2015 (O&M)

Date of decision : 09.01.2019

Sarabjit Singh and another

... Petitioners

Versus

Gurmail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Salar, Advocate
for the petitioners

Mr. Inderjeet Singh, Advocate for
Mr. A.K. Walia, Advocate
for respondent Nos.1, 3, 5 and 6.

None for respondent Nos.2, 4 and 7.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the order dated 19.10.2015 (Annexure P-5), whereby the application at the instance of defendant No.2 seeking permission of the Court to lead secondary evidence with regard to the receipt/writing dated 23.01.1981, subject to existence and loss, has been allowed.

Learned counsel for the petitioner submitted that the petitioners-plaintiffs instituted the suit for possession in respect of land in dispute and for permanent injunction restraining the defendants from creating third party rights. The defendants in the written statement opposed the suit and claimed themselves to be owners in possession of the land

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measuring 0-8 biswas, having purchased the house along with brothers from Karnail Singh vide receipt/writing dated 23.01.1981, but neither the photocopy nor it was explained the same was lost. Now they have coined story alleging to have been lost without giving any date, thus, the Court below has committed illegality and perversity.

There is no representation on behalf of respondent-defendant No.2 being contesting respondent, despite service. I proceed to decide the present revision petition on merits.

I have heard learned counsel for the petitioners-plaintiffs, appraised the paper book and of the view there is force and merit in the submissions of Mr. Salar.

The provisions of Rule 1A of Order 8 of CPC enjoins an obligation upon the defendant to enclose the original documents along with the written statement. For the sake of brevity, the provisions of Rule 1A of Order 8 of CPC reads as under:-

"Rule 1A of Order 8 of CPC"

1. Written Statement.

[1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state

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in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to documents—

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.]”

Para 4 of the written statement, whereby the reference of receipt was made, reads as under:-

"4. That the answering defendant is owner in possession of the land measuring 0-8 biswa and the answering defendant is in possession of the land in dispute for the last 30 years. The answering defendant is owner in possession of the land & house measuring 0-8 biswa out of Khasra No.2012/929 |(1-10), and the answering defendant is in possession of the land & house in dispute for the last 30 years. The answering defendant and his brothers namely Harbans Singh and Sant Singh sons of Chand Singh, purchased the house and land from Karnail Singh son of Sh. Dhaunkal Singh, R/o Village Bassuwala, Tehsil Jagron, Distt. Ludhiana vide receipt dated 23.1.1981. From the date of purchase i.e. 23.1.1981, the answering defendant is owner in possession of the land & house thereon and the possession of the answering defendant is continuous, peaceful and without any interruption and in the knowledge of the plaintiffs and their father Karnail Singh and in the knowledge of whole of the village. There are three rooms, one bathroom, toilet and boundary wall around the house and the land which has fallen to the share of answering defendant, which was constructed by the answering defendant. The plaintiffs have no concern with the land & house of the

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answering defendant. So, the suit of the plaintiffs is liable to be dismissed qua the answering defendant."

There is no whisper of attaching the photocopy or loss of the receipt. Even an application (Annexure P-3) does not disclose the date of loss. In such circumstances, the trial Court ought not to have allowed the application for secondary evidence as the existence and loss *prima facie* has not been pleaded. The impugned order, under challenge, suffers from illegality and perversity and the same is hereby set aside. The present revision petition stands allowed.

09.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**