

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

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CR No.8263 of 2016 (O&M)

Date of Decision : 07.11.2019

Chander Pal Singh

....Petitioner

v/s

Shamlata Devi and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Ajay Shekhawat, Advocate for the petitioner.
Mr. Sanjay Vij, Advocate for respondent Nos.1 to 5.

B.S. Walia, J. (Oral).

[1] Challenge in the revision petition is to Order (Annexure P/4) dated 26.10.2016, passed by the learned Civil Judge (Junior Division), Gurgaon, vide which the application for leading additional evidence filed by the petitioner-plaintiff was dismissed.

[2] Brief facts of the case, leading to the filing of the revision petition are that the petitioner filed a suit for declaration with consequential relief of permanent injunction in June, 2009 with the averments that on the death of Ganga Sahai, mutation of inheritance was entered and sanctioned vide mutation No.33 on 26.04.1977 but the mutation was wrongly sanctioned in the name of the plaintiff, proforma defendants and defendant No.1 in equal share to the extent of 1/4th share each and the plaintiff and proforma defendants came to know regarding the impugned mutation of inheritance sanctioned after the death of their father only in the month of March, 2009 when defendant Nos.2 to 5 claimed 1/4th share of the said property and the plaintiff and proforma defendants went to the office of the

Halqa Patwari and obtained copies of concerned revenue records and thereby learnt of the wrong entries.

[3] On the basis of pleadings, issues were framed where after evidence was led by the parties. Eventually, evidence was closed by the petitioner-plaintiff on 11.11.2014, where after the respondents-defendants also led evidence and thereafter closed their evidence. Thereafter, an application was moved, claiming that the suit property was inherited by Ganga Sahia from his father Rattan Singh, who had inherited the property from his father Bhoop Singh and the plaintiffs had produced the revenue record since 1916-17 to prove their case. However, at the time of perusal of the case file, it had been revealed that mutation of inheritance of Rattan Singh and Bhoop Singh had not been placed on the file and copy of *jamabandi* for the year 1977 and 1889-1990 and *Shijra Nasal* had also not been produced on file and that the petitioner-plaintiff had obtained the said documents on 28.07.2016 after closing of his evidence as the said documents came to his knowledge after closing of the evidence, therefore, in the facts and circumstances of the case, the petitioner-plaintiff was entitled to lead additional evidence but the learned trial court wrongly dismissed the application filed by the petitioner.

[4] Learned counsel for the respondents-defendants on the other hand vehemently contended that the application for additional evidence was rightly dismissed by the learned trial Court vide impugned order dated 26.10.2016 as perusal of paragraph No.7 of the plaint revealed that in the year 2009, the plaintiff and proforma defendants went to the office of the *Halqa Patwari* and obtained copies of concerned revenue records from

the circumstances, it is evident that the petitioner-plaintiff had the entire revenue record with him at the time of filing of the civil suit but for reasons best known to him did not refer to the same at said point of time and, was now seeking to produce the same on record by taking up the plea that the same had come to his notice only in the year 2016, without disclosing as to how and in what circumstances, the said documents which were sought to be produced by way of additional evidence had come to the notice of the petitioner-plaintiff only in the year 2016.

[5] Learned counsel further contended that the mere fact that the documents sought to be produced by way of additional evidence were part of public record would not by itself confer the petitioner-plaintiff a right to produce the same by way of additional evidence, without establishing exercise of due diligence, as also that the said documents were not available earlier despite best efforts or were not to the knowledge of the petitioner-plaintiff earlier due to circumstances beyond his control and that such record came to the notice of the petitioner-plaintiff only subsequently, where after the application for additional evidence was moved immediately.

[6] I have considered the submissions of learned counsel for the parties.

[7] Admittedly, the civil suit was filed in the year 2009. A perusal of paragraph No.7 of the plaint reveals the averments that in the year 2009, the petitioner-plaintiff and proforma defendants went to the office of the *Halqa Patwari* and obtained copies of concerned revenue record and from the same learnt about the wrong entries thereof. Evidence of the plaintiff was closed on 11.11.2014, whereas the application for leading additional

evidence of the petitioner-plaintiff and at the rebuttal stage, without establishing exercise of due diligence or for that matter, the circumstances, in which the record which is now sought to be placed on the record by way of additional evidence came to the notice of the petitioner-plaintiff. Thus, in view of the stand in paragraph No.7 of the plaint of the entire concerned revenue record having been obtained by the petitioner in the year 2009 and no explanation having been given, as to why said record was not produced earlier instead a bland statement having been made that the said record was not available earlier and came to the notice of the petitioner-plaintiff only in the year 2016, without setting out the circumstances, explaining exercise of due diligence, as also as to how and in what circumstances, the record now sought to be produced by way of additional evidence came to the notice of the petitioner-plaintiff in the year 2016, no case whatsoever is made out for interfering with the well reasoned order passed by the learned trial Court.

[8] Accordingly, finding no merit in the revision petition, the same is dismissed.

(B.S. Walia)
Judge

November 07, 2019
'Rajneesh'

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