

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

**CR No.8998 of 2017(O&M)
Date of Decision-31.01.2019**

Desa Singh through LRs

... Petitioners

Versus

Sukhraj Kaur and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ranjit Saini, Advocate for the petitioner.

Mr. Hitesh Ghai, Advocate for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 18.10.2017 passed by Civil Judge (Junior Division), Amritsar vide which the application filed by the plaintiff/petitioner under Order 11 Rules 14 and 15 read with Section 151 CPC for production of original agreement to sell dated 09.03.2013 was dismissed.

[2]. Plaintiff filed a suit for declaration to the effect that the plaintiff is owner in possession of the suit land and alleged sale deed dated 09.09.2013 is illegal, null and void. Consequential relief of permanent injunction was also sought, restraining the

defendant from interfering in the possession of the plaintiff. Plaintiff claimed that he is owner in possession of the land measuring 3 kanals and the defendant entered into an agreement to sell to purchase the same from the Northern side of the khasra number to the extent of 3 kanals from the plaintiff vide agreement to sell dated 09.03.2013. From the said land, the plaintiff had already dug out the earth and this fact was also mentioned in the agreement to sell and consequently, a rate was agreed and settled between the parties at Rs.11,25,000/- for the said land. The date of execution of sale deed was fixed for 09.09.2013. Plaintiff further claimed that he is an illiterate and old person and the defendant has played a fraud upon him by mentioning the khasra No.103//3/2/2/1 in the recital of the sale deed which was never agreed to be sold by the plaintiff. The said khasra number is of more value and more fertile and the defendant illegally and unlawfully got the same incorporated in the sale deed in connivance with deed writer and attesting witnesses. Plaintiff alleged fraud in the aforesaid context.

[3]. The possession of the suit land was never delivered to the defendant, rather possession of khasra No.103//8/1 was delivered and since then, defendant is in possession of khasra No.103//8/1. The sale deed was claimed to be illegal, null and void and result of fraud.

[4]. Plaintiff filed an application under Order 11 Rules 14 and 15 read with Section 151 CPC for production of original agreement to sell dated 09.03.2013 on the ground that the document in question is with the defendant and the same was not filed by the defendant along with the written statement. Photocopy of agreement to sell dated 09.03.2013 was relied by the plaintiff by claiming that the original of the same is with the defendant. Production of original agreement to sell was sought.

[5]. The application was contested by the defendant on the ground that the agreement to sell was executed in respect of 103//3/2/2/1 and sale deed was executed strictly in consonance with agreement to sell. The photocopy as projected by the plaintiff was claimed to be a manipulated document after making alterations in khasra numbers by erasing real khasra numbers. Defendant pleaded that she will lead her evidence and will produce her documents at the relevant stage of her leading evidence and there is no necessity to produce any original document and it was for the plaintiff to prove his case by leading his affirmative evidence without taking assistance of the Court.

[6]. Trial Court dismissed the application vide impugned order dated 18.10.2017 by holding that assertion to the effect that the agreement to sell is in possession of the defendant has not been supported by any affidavit of the plaintiff. Plaintiff has

already availed number of opportunities and it was only on 4th opportunity of leading evidence, the application in question came to be filed. In the plaint itself, plaintiff has not pleaded in any manner that the original agreement to sell is in possession of the defendant.

[7]. Learned counsel for the respondent submitted that while leading evidence on three initial dates, the plaintiff did not alter a single word in respect of production of original document, rather proceeded to adduce evidence as per his own desire. It was only on 4th opportunity, the plaintiff woke up and filed the application asserting that the original agreement to sell is in possession of the defendant. There is no whisper in the plaint as to the original agreement to sell is with the defendant. Plaintiff has never resorted to any leading of secondary evidence.

[8]. Learned counsel further submitted that it is a settled principle of law that production of documents in terms of Order 11 Rule 14 CPC can only be ordered by the Court after satisfying itself about the relevancy, relativity or essentiality of production of such document. All the aforesaid requirements cannot be ascertained without there being a determination of issue with reference to evidence. Plaintiff has not pleaded anything in the plaint in respect of agreement to sell being in possession of the defendant. Such a course cannot be adopted in a routine matter.

Reference can be made to **The Tata Iron and Steel Co. Ltd. and others Vs. Prop. Ajit Cotton Ginning Pressing Dall and Stell Rolling Mills, 2013(1) RCR (Civil) 506** in the aforesaid context. The expediency and relevancy of the document have to be determined by the Court in a judicious manner before resorting to provision in terms of Order 11 Rule 14 CPC as no roving inquiry for fishing out the evidence can be resorted to by the Court. At the same time, it cannot be lost sight of. Learned counsel also submitted that the stand taken by the defendant is that the defendant will lead her evidence and will produce her documents at the relevant stage of her leading evidence and there is no necessity to produce any original document at this stage.

[9]. I have considered the submissions made by learned counsel for the parties.

[10]. From the arguments raised by learned counsel for the parties, this Court finds that the defendant has not denied the existence of document in specific terms, rather the stand taken by the defendant is that she will lead evidence/documentary evidence at the relevant time. The Court has to satisfy itself with regard to necessity and relevancy of the document. The Court has to record its satisfaction in terms of provision of Order 11 Rule 12 CPC that the document in question is not necessary

either for disposing fairly of the suit or for saving costs. On that premise, the Court has to record findings in respect of satisfaction and the possession of the document with the defendant. It appears from the record that the trial Court has not acted in a judicious manner to answer the compliance of Order 11 Rules 12 and 14 CPC while deciding the application in question.

[11]. In **Sharvan Kumar Vs. Sumeet Kumar Garg, 2002(3) PLR 666**, it was held that nature of provision itself does not leave any room to refuse such a request. The only exception that can be made is with regard to privilege document under Sections 122, 123 and 124 of the Indian Evidence Act. This rule is entirely different to Order 11 Rule 12 CPC which is confined to discovery of document. Under Order 11 Rule 14 CPC, all the documents are required to be produced as long as they are found to be relevant. Under Order 11 Rule 12 CPC, party can be asked to make discovery on oath, of document which is in his possession or power. If such discovery is found to be unnecessary, then such a prayer can be rejected on the ground that it is not necessary for disposing of the suit.

[12]. Since the impugned order dated 18.10.2017 passed by Civil Judge (Junior Division), Amritsar is silent about the aforesaid requirement of law, therefore, I deem it appropriate to

direct the trial Court to re-visit the issue in terms of legal grounds and pass a fresh order in accordance with law.

[13]. Disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

31.01.2019
Prince

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