

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.5209 of 2019

Date of decision: 05.09.2019

Ravi Sharma

...Petitioner

Versus

Naresh Chand

...Respondent

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

Present: Mr. Diwan S. Adlakha, Advocate for the petitioner.

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**B.S. WALIA, J. (Oral)**

1. Challenge in the revision petition under Article 227 of the Constitution of India is to order Annexure P/5 dated 07.08.2019, passed by the learned Civil Judge (Junior Division), Sub Division, Bilaspur, dismissing the application filed by the petitioner-plaintiff for permission to adduce additional evidence.

2. Brief facts of the case leading to the filing of the revision petition are that a suit for declaration was filed by the petitioner-plaintiff that he is owner of the suit property on the basis of Will No.48 dated 21.11.2000, executed by his grandfather in his favour. Issues in the case were framed on 08.11.2017, out of which, issue No.2 was as to 'Whether the petitioner/plaintiff is entitled for a decree for declaration to the effect that he is owner of the suit property on the basis of Will No.48 dated 21.11.2000, executed by Chunni Lal, his grandfather, as prayed?' Onus of the issue was on the petitioner/plaintiff. Petitioner/plaintiff did not lead any evidence in support of Issue No.2 while leading evidence on the other issues.

Thereafter, evidence of the petitioner/plaintiff was closed on 08.08.2018, where after the case was fixed for evidence of the respondent/defendant and the respondent/defendant closed his evidence on 17.10.2018, after which the case was fixed for rebuttal on 31.10.2018, 14.11.2018 and 21.11.2018. No rebuttal evidence was lead but on 21.11.2018, an application was moved by the petitioner/plaintiff for adducing additional evidence, whereupon, the case was adjourned for filing reply to the said application. However, on 09.01.2019, arguments on the application for adducing additional evidence were not advanced and another application for framing of additional issue was moved by the petitioner/plaintiff On 07.08.2019, after hearing submissions of learned counsel for the parties, both the applications i.e. application for leading additional evidence as well as for framing of additional issues were dismissed.

3. Learned counsel contends that the application ought to have been allowed for the just and proper adjudication of the case and that no prejudice is going to be caused to the respondent. Learned counsel further contends that the death certificate of attesting witnesses to the Will came to the notice of the petitioner during the interregnum when opportunity had been granted by the learned trial Court to lead rebuttal evidence and that the respondent can be compensated by payment of cost as deemed appropriate.

4. I have considered the submissions of learned counsel for the petitioner.

5. A perusal of the impugned order Annexure P/5 dated 07.08.2019 reveals that the application was dismissed on the ground

that entire evidence to prove the Will in dispute i.e. Will No.48 was in the knowledge of the petitioner at the time of leading his evidence in affirmative and no fresh evidence had come at this stage. Moreover, the petitioner had also not explained due diligence for not submitting the alleged evidence at the stage of leading evidence in affirmative and that in view of the fact that the alleged evidence which is now sought to be adduced by way of additional evidence, there was absence of due diligence by not submitting the evidence at the time of affirmative stage and the application had been filed just to linger on the case, therefore, the same is not maintainable.

6. In the light of the position as noted above, I do not find any infirmity with the order passed by the learned trial Court dismissing the application for leading additional evidence. Accordingly, the application being bereft of merit is dismissed.

(B.S. WALIA)  
JUDGE

05.09.2019

rajesh.k.khurana

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|------------------------------|---|---------|
| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable        | : | Yes/No. |