

CR-6888 of 2019

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

**CR No.6888 of 2019(O&M)
DATE OF DECISION:06.11.2019**

Randhir Singh

...Petitioner/plaintiff

Vs.

Joginder Kaur through LRs and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Jaswinder Singh Grewal, Advocate
for the petitioner/plaintiff.

LALIT BATRA, J. (Oral)

Present revision petition has been filed by petitioner/plaintiff impugning the legality of order dated 10.10.2019 (Annexure P-6) rendered by trial Court, in terms of which, application moved by petitioner/plaintiff for permission to adduce additional evidence to produce and prove on the record copy of postal receipt dated 06.11.2012, acknowledgement thereof and copy of *jamabandi* of suit property, has been dismissed.

2. Briefly stated, the petitioner/plaintiff has filed a suit seeking relief of possession of suit property by way of specific performance of oral agreement to sell dated 13.01.2008.

3. Learned counsel for the petitioner/plaintiff at the very outset has argued that the impugned order dated 10.10.2019 is not sustainable in

the eyes of law as documents, as detailed above, sought to be produced by way of additional evidence by petitioner/plaintiff go to the root of the case and, thus, said documents are very much necessary for proper adjudication of the suit. He further urged that trial Court while declining above said application has laid emphasis on the aspect that once the documents, as detailed above, were well within knowledge of petitioner/plaintiff since the inception of civil suit and especially the fact that as petitioner/plaintiff had already availed number of effective opportunities to lead his evidence, therefore, there was no reason to allow above said application. He further urged that the findings recorded by the trial Court cannot be sustained as in spite deletion of provisions of Order XVIII Rule 17-A CPC, the Court has inherent power to allow additional evidence in case it is necessary for just and proper adjudication of the case. He further urged that since proposed evidence is necessary for proper adjudication of the suit, delay on the part of petitioner/plaintiff to adduce said evidence, could not stand in the way of allowing the application.

4. I have heard learned counsel for the petitioner/plaintiff and have carefully gone through the record of the case.

5. Under Article 227 of the Constitution of India, the powers can always be exercised to correct an error in the order of the trial Court which causes injustice to a party. In the present case, while rejecting the application for leading additional evidence, the trial Court has shut a

material piece of evidence which goes to the root of the matter and is required for just and proper adjudication of the case.

6. In case **Salem Advocate Bar Association, Tamil Nadu V. Union of India, 2005(3) RCR(Civil) 530 (SC)**, Hon'ble Supreme Court has held that in spite deletion of provisions of Order XVIII Rule 17-A CPC, the right to produce evidence at later stage by way of additional evidence, is not taken away as the Court has always inherent power to exercise the jurisdiction for advancement of justice in terms of provisions under Section 151 CPC.

7. Additional evidence is not to be evaluated at the stage of deciding application. However, a duty is cast on the Court to examine *prima-facie* the relevance of the material sought to be produced so as to conclude that application filed is *bona fide* and not to abuse the procedural law to harass the opposite party. To this effect, reliance can be placed on ruling **"Rajesh Kumar versus Mangat Rai and others" 2012 (2) Civil Court Cases 712 (P&H)**.

8. Keeping in view ratio decidendi of above said rulings and in a given set of facts, it appears that if additional evidence, as detailed above, sought to be led by way of instant application, is allowed to be proved on record, it would be helpful for the trial Court for proper adjudication of matter before it.

9. As a sequel to above discussion, instant civil revision is allowed. Impugned order dated 10.10.2019 rendered by trial Court

declining application for leading additional evidence, is set aside. Resultantly, application for leading additional evidence, as detailed above, moved by petitioner/plaintiff, is allowed, but subject to deposit of costs of ₹ 5,000/- by petitioner/plaintiff in favour of District Legal Services Authority, Rupnagar. It is also made clear that only one effective opportunity is to be provided to petitioner/plaintiff to lead additional evidence, as detailed above, by the trial Court.

10. Disposed of.

(LALIT BATRA)
JUDGE

06.11.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No