

**CR No.7100 of 2019**  
**DATE OF DECISION:27.11.2019**

# Om Parkash

...Petitioner/contesting defendant No.1

 $V_S$ 

### Sampat and others

## ..Respondents/contesting respondents

**CORAM:- HON'BLE MR.JUSTICE LALIT BATRA**

Present: Mr. Sandeep Kumar Yadav, Advocate  
for the petitioner/defendant No1.

**LALIT BATRA, J. (Oral)**

Present revision petition has been filed by petitioner/defendant No.1 (Om Parkash) impugning the legality of order dated 21.05.2019 (Annexure P-2) rendered by trial Court, in terms of which, evidence of defendant No.1/petitioner was closed by Court order. Further, petitioner/defendant No.1 has challenged the legality of order dated 31.10.2019 (Annexure P-1) rendered by trial Court, in terms of which, application under Section 151 CPC for leading additional evidence moved by defendant No.1/petitioner, has been dismissed.

2. Briefly stated, in terms of application for leading additional evidence moved under Section 151 CPC, petitioner/defendant No.1 wants to prove on record original Will Deed No.55 dated 18.07.1994 executed by Gordhan son of Harnam and that too by examination of Shri Niwas, attesting witness of said Will.

3. Learned counsel for the petitioner/defendant No.1 at the very outset has argued that impugned orders dated 21.05.2019 (Annexure P-2) and 31.10.2019 (Annexure P-1) are not sustainable in the eyes of law as witness and document, as detailed above, sought to be produced by way of additional evidence by petitioner/defendant No.1, go to the root of the case and, thus, said evidence is 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 no appeal/revision was filed by the petitioner/defendant No.1 against impugned order dated 21.05.2019, in terms of which, evidence of petitioner/defendant No.1 was closed by Court order, said order had attained finality and further the fact that document (Will), as detailed above, was well within knowledge of petitioner/defendant No.1 since the inception of civil suit, 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 civil suit, delay, if any, on the part of petitioner/defendant No.1, to adduce said evidence, could not stand in the way of allowing the application.

4. I have heard learned counsel for the petitioner/defendant No.1

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 closing the evidence of petitioner/defendant No.1 and further while rejecting his 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, is allowed to be brought on record, it would be helpful for the trial Court for proper adjudication of matter before it as alleged Will Deed No.55 dated 18.07.1994 of Gordhan son of Harnam is matter in issue.

9. As a sequel to above discussion, instant civil revision petition is allowed. Impugned orders dated 21.05.2019 (Annexure P-2) and 31.10.2019 (Annexure P-1) rendered by trial Court, while ordering closure of evidence of petitioner/defendant No.1 and further declining his application for leading additional evidence, are set aside. Resultantly, application for leading additional evidence, as detailed above, moved by petitioner/defendant No.1, is allowed, but subject to deposit of costs of ₹5,000/- by petitioner/defendant No.1 in favour of District Legal Services Authority, Charkhi Dadri. It is made clear that only one effective opportunity be provided to petitioner/defendant No.1 to lead additional evidence, as detailed above, by the trial Court.

10. Disposed of.

**(LALIT BATRA)**  
**JUDGE**

**27.11.2019**  
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Whether speaking/reasoned: Yes/No  
Whether reportable: Yes/No