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

**Civil Revision No.517 of 2018 (O&M)
Date of Decision: 28.08.2019**

Alim

.....Petitioner

Vs

Ram Gopal

....Respondent

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

Present: Ms. Savita Rana, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J.

CM No.25489-CII of 2018

Prayer made in this application is for bringing on record the legal representative of deceased/ respondent Ram Gopal, who died on 03.12.2018 i.e. during pendency of the revision petition.

For the reasons mentioned in the application, the same is allowed and the legal representative of deceased Ram Gopal as shown in para no.4 of the application is ordered to be brought on record, subject to all just exceptions.

Main case

[1]. Petitioner has preferred this revision petition against the

order dated 08.12.2016 passed by the Civil Judge (Jr. Divn.) Karnal vide which evidence of the plaintiff/petitioner was closed by order of the Court and order dated 08.01.2018, vide which the application for additional evidence was also dismissed.

[2]. Plaintiff/petitioner filed a suit for specific performance with a consequential relief of permanent injunction against the defendant/respondent on the basis of agreement to sell dated 20.05.2013. Plaintiff alleged that the agreement to sell was executed by the defendant for selling his house with all rights for a total consideration of Rs.8,80,000/- and the entire consideration was received by the defendant in the presence of witnesses and possession of the house was also delivered to the plaintiff.

[3]. The suit was contested by the defendant on numerous grounds. Vide order dated 08.12.2016 passed by the Civil Judge (Jr. Divn.) Karnal the evidence of the plaintiff was closed by order of the Court, after completing cross-examination of PW-4. The case was adjourned for evidence of the defendant at his own responsibility.

[4]. Plaintiff filed an application for additional evidence on the ground that due to inadvertence stamp vendors namely Surender Kumar and Inderpal as well as notary public Sh. Jai Parkash could not be produced by the plaintiff as witnesses.

The aforesaid witnesses were claimed to be material witnesses for just decision of the case.

[5]. The application was dismissed by the trial Court vide order dated 08.01.2018 on the premise that original agreement to sell has not been relied by the plaintiff even by way of filing application for secondary evidence. The copy of agreement to sell (Ex.P-18) was the photostat copy and no purpose would be served by examining the notary public without bringing the original agreement to sell on record. Name of the notary public was shown in the list of witnesses by the plaintiff, but despite that, the said witness was not produced, nor any application was filed for summoning him as witness. The evidence of the plaintiff was closed by order of the Court after availing 8-9 effective opportunities by the plaintiff. The names of the stamp vendors were not mentioned in the list of witnesses, nor those witnesses were produced, nor any application for summoning them was moved by the plaintiff. The main thrust on which the prayer was declined was non-proving of original agreement to sell or any application for leading secondary evidence on the basis of photostat copy already on record.

[6]. I have considered the submissions made by learned counsel for the appellant.

[7]. During course of proceedings on 04.04.2019, it was

found that after passing of the impugned order, petitioner has already moved an application for production of original agreement to sell on record before the trial Court. The said application was not decided due to the interim direction issued by this Court, directing the trial Court to adjourn the case beyond the date fixed. It was observed by this Court that in order to facilitate the trial Court to decide the said application on merit, the rigor of interim order passed by this Court should be clarified to that extent. Consequently, the interim direction passed by this Court was modified to the extent of allowing the trial Court to decide the application in accordance with law without being influenced by the pendency of the revision petition.

[8]. On 19.08.2019, Mr. Sanjay Sharma legal representative of deceased Ram Sarup (respondent) appeared in the case and stated before the Court that the application for producing the original agreement to sell was pending before the trial Court for 26.08.2019 and he had already filed reply to the said application before the trial Court.

[9]. Today learned counsel for the petitioner apprised this Court that the application for production of original agreement to sell has been allowed by the trial Court on 26.08.2019 and the case has reached the stage of rebuttal and arguments.

[10]. In the reply to the application for producing original agreement to sell on record, the defendant/respondent has denied the contents of the application, but in the prayer clause he stated that the plaintiff be allowed to produce false and fabricated unregistered agreement with heavy costs so that the defendant may expose the plaintiff before the Court with the support of direct and relevant evidence in accordance with law.

[11]. It is a settled principle of law that the additional evidence should be in consonance with the case set up by the plaintiff and that would facilitate the Court to decide the *lis* in a more appropriate manner. If something remains obscure, the same can be filled in by way of additional evidence. The additional evidence if goes to the roots of the case, can be allowed at any stage of the litigation. The effect of the evidence would be decided by the Court at the relevant stage.

[12]. In view of above facts and circumstances, I deem it appropriate to accept this revision petition. Consequently, the impugned orders dated 08.12.2016 and 08.01.2018 passed by the Civil Judge (Jr. Divn.) Karnal are set aside. Petitioner is permitted to lead additional evidence in accordance with law, however subject to payment of costs of Rs.10,000/- to be paid to the legal representative of the defendant.

[13]. Payment of costs shall be the condition precedent for

granting indulgence by the trial Court in the aforesaid context.

[14]. All pending misc. application (if any) are also disposed of.

August 28, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No