

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

**Civil Revision No.4580 of 2018 (O&M)
Date of Decision: 14.02.2020**

Shakuntala Devi (since deceased)
through her legal heir-Sukhdev Raj

.....Petitioner

Versus

Nirmala Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Aakash Gupta, Advocate for the petitioner.

Mr. Varun Sharma, Advocate for the respondents.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 15.05.2018 (P-1), passed by learned Civil Judge (Sr. Divn.), Jalandhar, whereby the application of the petitioner seeking permission to lead additional evidence by way of examining the official witnesses from Cantonment Board along with one independent witness was rejected.

On 10.08.2018, at the time of issuing notice of motion, the following contention was raised on behalf of the petitioner before the co-ordinate Bench of this Court:-

“Learned counsel for the petitioner submits that as a matter of fact the evidence that is sought to be led, in the form of examination of an official of the Cantonment Board, is imperative, as the suit property is stated to have been transferred to the petitioner in the year 1970 by way of a sale deed which was not registered, as at the relevant time it was not compulsorily registrable, the value thereof being less than ` 100/-, and to prove that fact, the official of the Cantonment Board is required to be examined.”

Today again, the above submission is repeated on behalf of the petitioner to the effect that witnesses from the Cantonment Board along with independent witness are very much necessary to prove the factum of Sale Deed for proper adjudication of the matter in controversy.

On the other hand, learned Counsel for the respondents has opposed the prayer and submitted that impugned order is perfectly justified and petitioner is not only delaying the proceedings, but also trying to fill up the inherent lacuna in the case.

Heard learned Counsel for the parties and perused the paper-book.

It transpires that petitioner/plaintiff claiming herself to be the owner of house in dispute on the basis of Sale Deed dated 11.03.1970, filed suit for mandatory injunction directing the respondents/defendants to hand over the vacant and physical possession of the same. In response to the notice received by the respondents/defendants, detailed written statement was filed in July, 2012 and para 5 of the preliminary objections being material reads as under:-

“That the plaintiff has got no concern, right or title with the suit property bearing No.15/1, 15/2 and 15/3, R.A. Bazar/Topkhana Bazar, Jalandhar Cantt. The suit property was earlier owned and possessed by the grand-father of Defendant No.4, great-grand-father of Defendants No.2 & 3 and grand-father of husband of defendant No.1, namely, Shri M. Zandhu. Shri M. Zandhu died leaving behind Guran Ditta who inherited the suit property after the death of Shri M. Zandhu. Guran Ditta also died some where in the year 1948 leaving behind 2 sons namely; AllaLok, Defendant No.4 and Des Raj, who became owners after the death of Guran Ditta. Des Raj has also died in the year 1989 leaving behind Defendants No.1 to 3 as his legal heirs. Now Defendants No.1 to 3 are owners to the extent of ½ share and Defendant No.4 is owner of ½ share of the suit property. The possession of the defendants over the suit property is as owners in

their own right. The plaintiff has got no concern with the same. The House Tax, sewage and water tax bills are being paid by the defendants or by their predecessors which are being issued in the name of Shri M. Zandhu. The plaintiff has forged and fabricated one unstamped and unregistered sale deed dated 11.03.1970 in order to grab the property of the defendants. The alleged vendor Babu Lal was never the owner of Property No.15/1 to 15/3. RA.Bazar, Topkhana Bazar, Jalandhar Cantt. He had got no right, title or interest in the said property nor he could pass any title as he himself was not having any title. The plaintiff is liable to be prosecuted for forging and fabricating the alleged sale deed dated 11.03.1970 in connivance with Nirmal Kumar. The property, was worth about Rs.50,000/- at that time. In order to grab the property of the defendants this document has been forged and fabricated by the plaintiff. The defendants reserve the right to take legal action against the plaintiff, civil as well as criminal, for forging and fabricating the document and inducing the Hon'ble Court to act upon the same. The possession of the defendants as owners is since their forefathers.”

Perusal of the above preliminary objection clearly reveals that respondents/defendants specifically denied the factum of Sale Deed dated 11.03.1970 being a forged and fabricated document, thus, petitioner/plaintiff was very well aware of the same since July, 2012, but despite that, she did not care to lead relevant evidence for proving Sale Deed in question.

Concededly, the issues in this case were framed in the year 2013 and after consuming more than three years, the evidence of the petitioner/plaintiff was closed in the year 2017. Undisputedly, the entire evidence of the respondents/defendants is also already over. The case was fixed for final arguments, then at this stage, petitioner moved the application for leading additional evidence to examine the official(s) from Cantonment Board along with some independent witness to prove the factum of Sale Deed dated

11.03.1970, which can be termed only an afterthought exercise just to fill up the fundamental lacuna of the case.

Since July, 2012, petitioner/plaintiff was well aware about the objection raised against the Sale Deed dated 11.03.1970, thus, she ought to have led the requisite evidence in affirmative at the appropriate stage, but instead waited for five years to mature the case for final arguments and moved the application for additional evidence just to put the clock back. In such a scenario, if the application for additional evidence is allowed, then there would be no end to the litigation and the same shall continue for an indefinite period, which cannot be countenanced at any cost.

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that impugned order is perfectly legal and justified, hence, does not warrant any interference while invoking jurisdiction under Article 227 of the Constitution. Still further, it would be appropriate to observe here that present petition is complete misuse of the process of the Court, therefore, there is no option except to dismiss the same with costs of ₹ 5,000/- to be paid to the respondents/defendants.

Ordered accordingly.

February 14, 2020

Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>