

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

(Proceedings conducted through video conferencing)

CR No.5023 of 2019(O&M)

Date of decision: 19.11.2020

Rattan Lal

.....Petitioner

VERSUS

Asha Rani and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Mandeep Kaushik, Advocate for the petitioner.

Mr. Vaibhav Sehgal, Advocate for respondents No.1 and 2.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 13.08.2019 (Annexure P-9) passed by the Additional District Judge, Ludhiana whereby application filed under Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for deciding the application under Order 41 Rule 27 CPC prior to deciding the main appeal has been dismissed.

The petitioner/plaintiff filed suit for declaration that he is joint owner in possession to the extent of 1/6 share in property unit No.B-XXIII-79/1 (80/56/P-155) situated in Industrial Area, Ludhiana and Will dated 11.07.1997 set up by defendant No.1 alleged to be executed by deceased Sohan Lal Sahnan is forged and does not confer any title in favour of respondent No.1. The trial Court returned findings in favour of respondent No.1 in respect of aforesaid Will and consequently suit filed by the petitioner was dismissed. The decree passed by the trial Court became subject matter of challenge in first civil appeal pending before the Court of

Additional District Judge, Ludhiana. In the appeal, the petitioner filed an application for adducing additional evidence in respect of information received by him from the office of Sub Registrar, Ludhiana that record of Vasika No.563 dated 26.09.2006 i.e. vasika of the disputed Will is not available in its office. The petitioner filed the instant application by invoking Section 151 CPC for deciding the application for additional evidence prior to deciding the main appeal but the same was dismissed vide order impugned.

Counsel for the petitioner would argue that as the documents sought to be produced by way of additional evidence could not be produced despite exercise of due diligence as the reports were obtained from the office of Sub Registrar, Ludhiana subsequent to decision of suit by the trial Court, production of these documents is relevant and material for deciding the issue qua correctness and authenticity of Will bearing Vasika No.563 dated 26.09.2006 set up by respondent No.1 (defendant No.1 in the suit). It is further argued that in the given circumstances, the Appellate Court was required to decide the application for additional evidence even before hearing the parties on merits of the appeal. In support of his contention, he has relied upon judgment of this Court **Harpreet Kaur and another Vs. Sawinder Kaur and others, 2018(4) PLR 549.**

Counsel for the respondents, on the contrary, has supported the impugned order with the submission that relevance of the documents sought to be produced by way of additional evidence can be better appreciated by the Court in appeal at the time of hearing of the appeal on merits. It is further argued that it has been laid down in a catena of judgments of various Courts including Hon'ble the Apex Court that

application for additional evidence needs to be heard and decided at the time of hearing of the appeal on merits. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **State of Rajasthan Vs. T. Sahani, 2001 (2) RCR (Civil) 419**, judgment of Calcutta High Court **Smt. Sakuntala Chakraborty Vs. Shiba Prosad Roy and another, AIR 1998 (Calcutta) 29**, judgment of Himachal Pradesh High Court **Sh. Jagdish Raj and another Vs. Smt. Dhali Devi, 2016 Latest HLJ (H.P.) 1520** and judgment of Kerala High Court **Mariamamma Vs. Poulose, 2007 (32) RCR (Civil) 246**.

Counsel for the petitioner, in reply, would argue that as the Will in question is the result of fraud committed by respondent No.1, application for additional evidence is required to be decided prior to decision on appeal. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **North Eastern Railway Administration Vs. Bhagwan Das (D) by LRs, 2008(3) RCR (Civil) 165**. In addition, it is argued that even if the petition is dismissed but application for additional evidence is allowed by the Appellate Court at the time of hearing of appeal, directions may be issued to the Appellate Court as to how the additional evidence would be recorded in view of the provisions of Order 41 Rule 28 CPC.

I have heard counsel for the parties and perused the paper-book.

Counsel for the respondents has referred to various judgments of Hon'ble the Supreme Court and High Courts wherein it has been consistently held that application for additional evidence should be considered and decided while hearing the appeal on merits. The Appellate Court while hearing the appeal can better appreciate, if the evidence sought

to be produced by way of additional evidence is required to enable it to pronounce judgment or for any other substantial cause, envisaged in clause (b) of Order 41 Rule 27 CPC. In the judgment relied upon by counsel for the petitioner, application for additional evidence had already been allowed before deciding the appeal and in those circumstances, this Court refused to interfere in the order impugned for the reasons stated therein. In the said case, the question before this Court was not as to whether the application for additional evidence is to be decided prior to hearing of appeal or otherwise.

The contention of the petitioner that Will is the result of fraud does not appear to be subject matter of grounds of revision. This apart, if any such contention is a subject matter of suit or appeal, the same would be appreciated by the first Appellate Court while deciding the application for additional evidence along with hearing the appeal on merits. In the given scenario, I do not find any reason to interfere in exercise of extra-ordinary jurisdiction under Article 227 of the Constitution of India.

Dismissed.

However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the application for additional evidence or appeal.

NOVEMBER 19, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no