

127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-254-2022 (O&M)

Date of decision : 18.07.2022

Avtar Singh

...Petitioner

Vs.

Sunita Rani and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gurpal Singh Kahlon, Advocate for the petitioner.

MANOJ BAJAJ, J.

CM-2655-CII-2022

Application is allowed as prayed for.

Annexures P-8 to P-11 are taken on record.

Main case

Petitioner (defendant) has filed this revision petition under Article 227 Constitution of India to challenge the order dated 27.10.2021 (Annexure P-1) passed by Additional Civil Judge (Senior Division), Shri Anandpur Sahib, whereby his application filed under Order XVIII Rule 17 Code of Civil Procedure for recalling and cross examining the witnesses, PW-1 and PW-2, has been dismissed.

Briefly, the facts of the case are that plaintiffs (respondents) brought a suit for possession by way of specific performance relating to property measuring 9 kanal 12.1/2 marlas comprised in Khata No.140/174, khasra No.27//9/1 (5-10), khata No.141/175-176, khasra No.21//2/1 min (3-3), 21/2/1 min (0-13), khata No.294/334, khasra No.21//3/2 (4-9), 4/2 (0-11), 7/2(1-0), 8/1(6-7), khata No.298/338 khasra No.21//2/2(3-12) situated at village Garh Baga, District Rupanagar, against defendant-Avtar Singh

(petitioner) on the basis of agreement to sell dated 04.12.2015, who pleaded that earlier an agreement to sell dated 19.11.2015 was executed between the plaintiffs and defendant-Avtar Singh (GPA of land owners Naresh Kumar and others) for purchase of land measuring 720 kanal @ Rs.1,20,000/- per acre and a sum of Rs.65 lacs was received by him as earnest money. Later, it was found that the land is not worth cultivation, and a criminal case bearing FIR No.4 dated 20.04.2016 under Sections 406 and 420 IPC was got registered against defendant at Police Station NRI, SBS Nagar. Subsequently, the defendant agreed to sell land measuring 9 kanal, 12.½ marla, owned and possessed by him and executed agreement, wherein he had acknowledged the receipt of Rs.65 lacs from plaintiffs and further agreed to return the same. The defendant had issued 13 post dated cheques in favour of plaintiffs and out of it, two cheques were dishonoured, but he agreed to return the amount in installments, with a condition that in the event of his failure, he would execute the sale deed in favour of the plaintiffs at the prevailing market price and the said sale consideration was to be deducted from his debt of Rs.65 lacs. Apart from it, defendant also agreed to return the amount received by him pursuant to the agreements dated 17.04.2012 in favour of Surjit Singh and dated 19.11.2012 in favour of Sunita Rani, on or before 04.08.2016.

As per pleadings, the defendant failed to keep his words and the suit land is valued at Rs.9 lacs, so the plaintiffs who have always been ready and willing to perform their part of the agreement of sell are entitled to execution of sale deed. According to plaintiffs, after deducting the sale consideration, still defendant owes Rs.56 lacs to them, but despite their

repeated requests to execute the sale deed, the defendant failed to do so, therefore, it was prayed that the plaintiffs are entitled to decree for specific performance. In alternative, it was also prayed that decree for recovery of Rs.65 lacs be passed in their favour.

The suit was contested by defendant by filing written statement, who raised various objections relating to maintainability of the suit on the ground of delay, cause of action, *locus standi* etc and on merits, it was pleaded that the agreements to sell relied upon by the plaintiffs are result of mis-representation and fraud. However, the registration of case against him was not disputed, but while denying other averments in the plaint, it was prayed that the suit be dismissed.

After commencement of trial, the plaintiffs examined his witnesses including PW-1-Palwinder Singh and PW-2-Kamaljit Singh and defendant/petitioner moved an application under Order XVIII Rule 17 CPC for recalling witnesses-PW1 and PW-2 for further cross-examination, in order to confront them with their statements dated 06.07.2017 and 13.11.2018, respectively recorded in some other court proceedings. The application was opposed by the plaintiffs/respondents and the same was dismissed by Additional Civil Judge (Sr.Division), Sri Anandpur Sahib vide impugned order dated 27.10.2021.

Learned counsel for the petitioner has argued that the witnesses of the plaintiffs', namely, Palwinder Singh (PW-1) and Kamaljit Singh (PW-2) specifically deposed in other cases that at the time of execution of the agreements dated 19.11.2015 and 04.12.2015, no money transaction took place between the parties. He submits that this admission suffered by these

witnesses was placed on record with the application, but Additional Civil Judge (Senior Judge), Ananadpur Sahib has erroneously declined the said permission. He submits that this material piece of evidence goes to the root of the controversy and in case the witnesses are recalled, no prejudice would be caused to plaintiffs, therefore, the impugned order deserves to be set aside.

During the course of hearing, it has not been disputed by learned counsel that witnesses sought to be recalled by defendant/petitioner were offered for cross-examination and same was concluded on 10.02.2021.

After hearing learned counsel and considering the above background, this Court finds that the statements which are relied upon by the petitioner/defendant to confront the plaintiffs' witnesses were recorded on 06.07.2017 and 13.11.2018 and since these were very much within his knowledge, he could have confronted them with the said material during their cross examinations. A perusal of the impugned order reveals that the Additional Civil Judge (Senior Division), Sri Anandpur Sahib has also given liberty to the defendant to produce the said statements of these witnesses, during his own evidence, therefore, impugned order does not warrant any interference.

Resultantly, revision petition is dismissed.

(MANOJ BAJAJ)
JUDGE

18.07.2022

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No