

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

CR No. 2585 of 2003 (O&M)

Reserved on : 28.09.2022

Pronounced on : 20.10.2022

Bawant Singh and others

...Petitioners

Versus

Gurnam Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Rakesh Chopra, Advocate
for the petitioners.

None for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 09.04.2003, passed by the lower appellate Court, vide which an application filed by the respondents/defendants under Order 41 Rule 27 read with Section 151 CPC for production of additional evidence was allowed.

It is worth noticing that this petition is pending since 2003 and it was admitted on 26.05.2003 and the proceedings before the lower appellate Court were stayed, with a direction that the case be listed within one year, however, this case has come up for final hearing after a period of about 19 years and in the intervening period, the proceedings before the lower appellate Court remained stayed.

Brief facts of the case are that the petitioners/plaintiffs filed a suit on 14.06.1997 for specific performance of agreement to sell dated 13.05.1996 regarding land in dispute. As per said agreement, it was settled

that the defendants will sell the land @ Rs. 45,000/- per Bigha and Rs. 2,23,000/- was received by the defendants as earnest money. It was further stated that the petitioners/plaintiffs are in possession of the land under a mortgage for a sum of Rs. 60,000/- and the sale deed was to be executed on or before 20.05.1997 on payment of balance sale consideration of Rs. 14,000/- but the respondents/defendants did not turn up.

The suit was contested by the respondents/defendants *inter alia* on the ground that the said agreement to sell is an outcome of a fraud and they denied the execution of the same as well as receiving of the earnest money.

The trial Court framed issues and vide judgment and decree dated 23.02.2001 decreed the suit and passed a decree for specific performance of the agreement to sell dated 13.05.1996 on payment of the balance sale consideration within a period of one month from the date of decree.

The respondents/defendants filed an appeal before the lower appellate Court against the judgment and decree passed by the trial Court, along with an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence. In the said application, it is stated that the plaintiffs have filed two suits against the appellants/defendants on the basis of two agreements to sell dated 13.05.1996 and 30.08.1996. Another suit for specific performance was filed by one Mohinder Singh, who is father of the plaintiffs, against the appellants/defendants on the basis of agreement to sell dated 30.08.1996. It is further stated that since it is the stand of the defendants in the written statement that they had borrowed Rs. 60,000/- from the plaintiffs in May, 1993, to secure the amount, the

entries were made in the record of the document writer, which are proved on record, vide Ex. D-1 to D-15. It was prayed that the entries in the register of the deed writer, which are attached as Annexures A-1 to A-14 with the application, be permitted to be led as additional evidence in order to show that the alleged agreement to sell was in lieu of borrowing the amount.

The aforesaid application was contested by the petitioners/plaintiffs on the ground that with a similar plea, an application under Order 6 Rule 17 CPC for amending the written statement was filed by the defendants, which was dismissed on 29.01.2003, therefore, there is no plea in support of which, additional evidence can be allowed to be led. It is also stated that proposed evidence will change the nature of the defence taken by the defendants and will cause prejudice to the rights of the petitioners/plaintiffs, in whose favour, the trial Court has already passed a decree.

The lower appellate Court, vide impugned order, allowed the said application by observing that if the permission to lead additional is allowed, it will not amount to reviewing the order dated 29.01.2003, vide which the appellate Court has dismissed the application filed by the defendants under Order 6 Rule 17 CPC for amending the written statement or taking the additional pleas. It is also observed that the proposed additional evidence will not amount to filling up of the lacunas, rather it will enable the Court to pronounce the judgment in a proper manner and the plaintiffs can be compensated by way of cost. The application was, thus, allowed on payment of cost of Rs. 1,000/-.

Learned counsel for the petitioners/plaintiffs has argued that the petitioners have taken a specific stand in the plaint that the land was

already mortgage with possession with the petitioners/plaintiffs for a sum of Rs. 60,000/- and the agreement to sell was executed and earnest money was paid.

Learned counsel for the petitioners further submitted that the execution of agreement to sell and payment of earnest money were duly proved by leading evidence and under issue No. 1, the trial Court has recorded a finding that the plaintiffs were ready and willing to perform their part of the contract.

Learned counsel for the petitioners further submitted that prior to filing the present application, an application under Order 6 Rule 17 CPC for amendment in the written statement was filed by the defendants, however, the same was dismissed on 29.01.2003 and the said order has attained finality and in the absence of the plea taken in the written statement, no evidence can be permitted, therefore, passing of the impugned order has virtually amounted to allowing the amendment in the written statement. Even otherwise, the defendants have failed to make out a *bona fide* case that he had no knowledge about the documents, which are now proposed to be produced by way of additional evidence and the civil suit remained pending for about 04 years and no such application was filed before the trial Court either for amendment in the written statement or for leading additional evidence. It is, thus, submitted that the condition that despite due diligence, the defendants could not lead evidence is not proved on record.

Learned counsel for the petitioner has further submitted that it is well settled proposition of law that additional evidence can be allowed even at the appellate stage, however, the Court is to consider at the time of

hearing of the appeal whether the documents sought to be filed as additional evidence need to be looked into to pronounce the judgment in a more satisfactory manner. Learned counsel for the petitioners has relied upon a judgment of Hon'ble Supreme Court rendered in **2001 (2) RCR (Civil) 419, State of Rajasthan vs. T. Sahani**, wherein it was observed as under:

“...It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy AIR 1963 SC 1526 pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 CPC should have been decided along with the appeal. Had the court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view would be inappropriate. Further, the reason given for the dismissal of the applications is untenable. The order under challenge cannot, therefore,

be sustained. it is accordingly set aside. The application is restored to its file. The High Court will not consider the appeal and the application and decide the matter afresh in accordance with law...”

Learned counsel for the petitioners has further relied upon a judgment of this Court rendered in **2003 (1) RCR (Civil) 85, Municipal Committee, Ellenabad vs. Shanti Devi and 2016 (4) Law Herald 3309, Raj Rani and another vs. Naranjan Singh through Daljit Kaur and another**, wherein this Court has held that an application filed under Order 41 Rule 27 CPC before the lower appellate Court is to be considered and decided by the Court while hearing the main appeal on merits as the appellate Court would be in a position to say if additional evidence is necessary or otherwise for doing substantial justice. In the both the aforesaid cases, this Court, while setting aside the order passed by the lower appellate Court, has directed the appellate Court to decide the application filed under Order 41 Rule 27 CPC at the time of disposal of the main appeal.

There is no representation on behalf of the respondents for the last many dates and even today, no one has put in appearance on their behalf.

After hearing learned counsel for the petitioner and going through the judgments of Hon'ble Supreme Court as well as of this Court, relied upon by the petitioners/plaintiffs, I find merit in the present revision petition.

The application for amendment of the written statement already stands dismissed by the same Court, in which a similar plea was taken by way of amending the written statement, therefore, the lower appellate Court, while passing the impugned order, was required to decide the application

along with the main appeal.

Accordingly, the present petition is allowed and the impugned order dated 09.04.2003, passed by the lower appellate Court, is hereby set aside.

The lower appellate Court is directed to decide the application, seeking to lead additional evidence, at the time of final disposal of the appeal.

Considering the fact that this revision remained pending for about 19 years and there was a stay on the proceedings before the Court below, the lower appellate Court is directed to dispose of the appeal expeditiously, preferably within a period of six months from today.

20.10.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No