

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

CR-7680-2014 (O&M)

Date of Decision: October 21, 2022

GURINDER SINGH CHOPRA

...Petitioner

Versus

AMRITSAR IMPROVEMENT TRUST

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Puneet Sharma, Advocate for the petitioner.
Ms. Navita Arora, Advocate for the respondent.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition challenge has been made to an order dated 03.11.2014 passed by learned Additional District Judge, Amritsar declining the prayer made by the petitioner for seeking permission to lead additional evidence under Order 41 Rule 27 CPC at the stage of first appeal.

The facts of the present case are the petitioner/plaintiff filed a suit for declaration claiming himself to be the owner of land to the extent of 5 kanals falling in khasra No.302, khewat No.610 situated in Tung Bala Urban, Tehsil and Distt. Amritsar with a further prayer for grant of mandatory injunction directing the respondent/ defendant to remove the structure raised upon the land owned by the petitioner. During pendency of the suit, while the evidence of petitioner was being recorded, documents Ex. P-14 to P-28 were produced on record on 08.11.2010 in the statement made by the petitioner being PW-1. All these documents were duly exhibited on record. It may be relevant to submit that the aforementioned document were obtained by the petitioner from the respondent under the

Right to Information Act which primarily were certified copies of the own record of the respondent being maintained by it in discharge of its official duties.

The trial Court vide *ex-parte* judgment and decree dated 25.10.2012 dismissed the suit filed by the petitioner/plaintiff. While doing so, the learned trial Court did not rely upon the documents Ex. P-14 to P-28 on the ground that though the same were obtained by the petitioner/plaintiff under Right to Information Act, however, the same were not duly proved by summoning the original record.

Aggrieved against the judgment and decree dated 25.10.2012 the petitioner/plaintiff filed first appeal. During pendency of the first appeal the petitioner/plaintiff moved an application dated 31.10.2014 seeking permission to prove on record all the aforementioned documents including few others by summoning the original record as well as the official concerned. Notice of the said application was issued to the respondents and a reply to it was filed. It is the aforesaid application filed under Order 41 Rule 27 CPC, at the instance of the petitioner which has been dismissed by the learned first Appellate Court vide impugned order dated 03.11.2014 and the same is now under challenge in the present revision petition.

It has been contended by learned counsel for the petitioner that all the documents which were duly exhibited on record before the learned Trial court were ignored for want of mode of proof in the absence of summoning the original record and as such the permission is now being sought for through application under Order 41 Rule 27 CPC which is very much necessary so as to prove all the aforesaid documents. He further submits that the same is going to even help the first Appellate Court to decide the *lis* between the parties more effectively. He also submits that all

the aforementioned documents now sought to be proved by way of additional evidence formed part of official record and were obtained from the respondents under the Right to Information Act and were even duly exhibited before the trial Court without there being any kind of objection or adjudication as regards the admissibility or the mode of proof. Learned Counsel also submits that any such objection as aforesaid was required to be adjudged there and then by the Court below in view of proviso to order 18 Rule 4 (1) CPC, which reads as under:-

“4. RECORDING OF EVIDENCE— (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.”

On the other hand, learned counsel for respondent while referring to Para 8 of the judgment passed by learned trial Court contends that the trial court while dismissing the suit not only discarded these documents on account of not having been proved or record; but also ignored these documents as regards their evidentiary value while declining the claim of the petitioner on merits. Learned counsel further submits that the application filed by the petitioner has also been rightly declined on the ground of delay as the suit was dismissed by the learned trial court on 25.10.2012; whereas the application in question was filed on 31.10.2014 i.e. after a period of almost two years. Learned counsel further relies upon the case of “ **K.R. Mohan Reddy Vs M/S Net Work Inc Rep.Tr.M.D**”,

reported as 2007(4) R.C.R (Civil) 770 and “**Mahavir Singh Vs Naresh Chandra**”, reported as 2001 (1) R.C.R (Civil) 454, in order to substantiate the plea of delay in filing the application, besides even raising the plea of petitioner trying to fill-up the lacuna in his evidence, while having failed to act with due negligence.

I have heard learned counsel for the parties and have gone through the paper-book as well as the records of the case. I find substantial merits in the contentions raised on behalf of the petitioner/plaintiff. All the documents now sought to be proved by way of additional evidence under Order 41 Rule 7 CPC at the first appellate stage were obtained by the petitioner/plaintiff under the Right to Information Act. All these documents are the official documents prepared by the respondent in discharge of its official duty. Still further, these documents were duly exhibited by the petitioner while leading his evidence before learned trial Court on 08.10.2010 and at that point of time, the trial court failed to exercise its jurisdiction vested under proviso to Order 18 Rule 4 CPC so as to adjudicate upon the mode of proof as well as their admissibility. As the issue of admissibility as well as the mode of proof of these documents was never adjudicated upon by the learned trial Court, it cannot be presumed that there was no due diligence on the part of the petitioner/plaintiff while having failed to call upon the officials from the office of respondent so as to prove these documents obtained by him under the Right to Information Act.

Having failed to convince the learned trial Court so as to consider the aforesaid documents while adjudicating the dispute on merits, the petitioner moved an application under Order 41 Rule 27 CPC at the time of final arguments in his first appeal. No doubt, there appears to be some delay on the part of the petitioner/plaintiff while moving this

application, however, I find that once these documents already form part of record of the trial Court, having been duly exhibited, cannot be ignored merely on this account and are thus, required to be considered by the first Appellate Court by allowing the petitioner/plaintiff to prove the same by calling upon the officials of the respondent. Besides it, even the delay in filing the application in the facts and circumstances can neither said to be inordinate nor intentional.

It is not a case where the petitioner/plaintiff never tried to produce these documents so as to prove his case, rather all these documents are on record and even exhibited before the Court below, however, have been discarded while considering the same at the time of final adjudication, just for want of mode of proof, of which, objection was never ever raised or adjudicated upon at the first instance and thus, allowing the application at this stage cannot be said to be filling up of lacuna by the petitioner . Once the learned trial Court itself adjudicated upon the point of mode of proof of the said documents at the time of final adjudication of the suit, the petitioner-plaintiff cannot be held to have acted without due diligence.

In the facts and circumstances of the present case, even the judgments cited by the learned Counsel for respondent are of no help as the same are clearly distinguishable on facts as the both primarily deal with the plea of delay and filling-up of lacuna by way of additional evidence at the stage of first appeal.

As a result of discussion made hereinabove, the impugned order dated 03.11.2014 passed by the learned first Appellate Court is hereby set aside. The present revision petition is accordingly allowed, permitting the petitioner-plaintiff to lead additional evidence in order to

prove the documents mentioned in his application i.e. P-3 filed before the learned first Appellate Court by calling upon officials of respondent along with the requisite original records.

Pending application(s), if any, shall also stand disposed of.

October 21, 2022
jyoti/ sanjay

(HARKESH MANUJA)
JUDGE

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