

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

CR-5499-2019

Date of decision: 09.08.2022

Pyare LalPetitioner

versus

Vikas and anotherRespondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Dalal, Advocate
for the petitioner.

Mr. Lokesh Sharma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 02.08.2019 passed by the trial Court, vide which an application filed by the petitioner/plaintiff to lead additional evidence was declined.

Brief facts of the case are that petitioner-Pyare Lal has filed a suit against the sole defendant-Vikas, praying for a decree of declaration with consequential relief of permanent injunction that one Lallu s/o Jage has sold 1300 sq. yards of land in favour of one Sarita w/o Ranbir which is in excess of his share as Lallu was owner in possession of only 241 sq. yards of land, however, on the basis of incorrect revenue record, he has sold the said land more than his share. Later on, Sarita has sold the same land measuring 1300 sq. yards in favour of the defendant vide subsequent sale deed dated 01.10.2010.

The suit was contested by the defendant and at the stage, when the case reached at the stage of rebuttal evidence, the present application was filed by the plaintiff on the ground that on verification from the revenue record and partition proceedings, he has come to know that in fact Lallu has sold the land in excess of his share and for that purpose, he wants to examine the revenue official, i.e. the *Halqa Patwari*, to prove the share of Lallu by way of producing the partition application titled as Narender etc. vs. Bhagwati etc. dated 06.05.2016.

The application was contested by the defendant and the trial Court dismissed the same by making the following observations:-

“6. After hearing the contentions raised by learned counsel for the parties, this court finds no force in the contention raised by the learned counsel for the applicant/plaintiff rather there is force in the contention raised by learned counsel for the respondents/defendants.

7. The applicant/plaintiff filed the present suit for seeking the relief of declaration with consequential relief of permanent injunction. The applicant-plaintiff has failed to furnish any plausible reason as to why he did not produce the aforesaid documents at the time of his affirmative evidence when the aforesaid documents are well within his knowledge. The plaintiff has availed so many effective opportunities to conclude his evidence and when he failed to conclude the same, the evidence of the plaintiff was closed by court order on dated 26.10.2017. Moreover, the plaintiff failed to state how this evidence is necessary to be produced for effective adjudication of the present suit.”

8. Further, this court wants to mention here that in the present case, the issues were framed on dated 12.05.2016. Thereafter, the plaintiff lead evidence and his evidence was

closed by court order on dated 26.10.2017. Thereafter, the defendants lead their evidence and now when the case was fixed for rebuttal evidence, if any and for arguments, the applicant/plaintiff moved the present application on dated 11.10.2018, which shows that the applicant/plaintiff wants to prolong the proceedings of this case, and wants to fill up the lacuna in his case, which is sheer abuse of process of law, particularly in the light of the fact that the present case pertains to the year 2015. No doubt, law of procedure is hand made of justice and it must be used to advance the cause of justice and to avoid causing in justice. But in the present case, the plaintiff filed the present application at this belated stage of the suit just to fill up the lacuna in his case.

9. So in view of my above-recorded discussion, reason, I am of the opinion that the present application is uncalled, unsustainable and the same is not maintainable and accordingly, the same being merits dismissal and the same is hereby dismissed.

10. Nothing contained herein above shall be considered to be the expression of my opinion on the merits of the case.”

Counsel for the petitioner submits that in fact, the petitioner came to know about this fact only at the stage when the application was filed and prior to that, it was not in the knowledge that Lallu has sold the land in excess of his share and, therefore, the application to lead additional evidence is a *bona fide* application.

Counsel for the respondent has, however, contested that even as per own pleading of the plaintiff, Lallu has sold the land firstly, in favour of Sarita, who is not a defendant and further, Sarita has sold it to the present defendant. The counsel further submits that in the

absence of Lallu, being arrayed as a defendant, who was the best person to disclose about his share, the suit itself is not maintainable and secondly, the fact that Lallu has sold land in excess of his share is itself mentioned in para 3 of the plaint which was filed on 26.06.2015 and, therefore, the trial Court has rightly held that the petitioner has failed to show that for any *bona fide* reasons, he was prevented from leading any evidence or the proposed evidence which came to his notice subsequent to closing of the evidence.

Accordingly, finding no merit in the present revision, the same stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

09.08.2022

Neha/Waseem Ansari

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No