

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7338 of 2019 (O&M)
Date of decision: 16.11.2022

Shaminder Singh

..Petitioner

Versus

Kesar Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S.Punia, Advocate
for the petitioner.

Mr. Manvinder Singh Sidhu, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

The plaintiff in a pending suit for grant of decree of declaration that he is owner in possession of the property on the basis of a memorandum of family settlement dated 05.07.2011 is the petitioner herein. He is the respondent's son. He has based his claim on the basis of alleged memorandum of family settlement signed by the parties.

The respondent, while filing the written statement, admitted the memorandum of family settlement. However, for the first time, while appearing in evidence, he denied the existence of the family settlement. The petitioner's application for permission to lead additional evidence in order to examine the Handwriting and Fingerprint Expert and Kanungo (the revenue official) has been dismissed.

The trial Court has held that since the petitioner's evidence was closed by Court order, therefore, no application for permission to lead additional evidence is maintainable. The reliance has been placed by the trial court on **Saroj vs. Charan Singh and others, 2017 (4) PLR 674**

equivalent to 2018 (5) R.C.R.(Civil) 771.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

The correctness of the facts noticed in the previous part of this order are not in dispute. It is not disputed that the respondent after admitting the alleged memorandum of family settlement dated 05.07.2011 in the written statement has taken a U-turn and denied its execution or existence while appearing in the evidence. In such circumstances, the plaintiff is required to be given an opportunity to prove the alleged memorandum of family settlement because the petitioner (plaintiff) was not required to prove the same, initially, as it was admitted by the respondent.

This Court has carefully and sincerely read the judgment passed in Saroj's case (supra). Though, in para 9, an observation has been made that the application for permission to lead additional evidence is not maintainable unless the order of the Court closing the evidence has been assailed, however, there is no reference either to any statutory provision or legal preposition which bars the filing of an application for additional evidence, once, by an order of the Court, the opportunity to lead evidence has been closed for the party. It is well known that the rules of procedure are handmaid of justice. The courts are required to take a holistic view of the matter in order to advance the cause of justice. During the pendency of the trial of the suit, the Court has the power to permit the parties to lead evidence. There is no difference between the party himself closing the evidence either in affirmative or in rebuttal or where the opportunity to lead evidence has been closed by an order of the Court. After deletion of Order

XVIII Rule 17A of the Code of Civil Procedure, 1908, Section 151 CPC

enables the Court to pass appropriate orders in the interest of justice or to prevent the abuse of the process of law. In the absence of any statutory prohibition, a party to the suit cannot be absolutely debarred from moving an application for additional evidence if he establishes a sufficient cause. The production of additional evidence is a well established practice which is being followed since ages. Before the amendment in 2002, the Parliament had, itself, made a provision in this regard. However, even after its deletion, the inherent powers of the Court, to do justice and prevent the abuse of the process of law, continue to exist.

Keeping in view the aforesaid facts, it is declared that the judgment passed in Saroj's case (supra) does not, as a ratio decidendi, lay down that no application for permission to lead additional evidence shall be maintainable if the evidence has been closed by an order of the Court.

The facts of the case clearly indicate that the defendant, while appearing in evidence, has taken a complete U-turn from his pleadings. In such circumstances, the plaintiff deserves an opportunity to lead additional evidence to prevent abuse of the process of law.

Consequently, the order dated 12.09.2019 is set aside.

The trial Court is requested to grant an opportunity to the petitioner to lead additional evidence.

The revision petition is allowed.

All the pending miscellaneous applications, if any, are also disposed of.

November 16, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*