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

CR-1899-2017 (O&M)
Reserved on : 19.05.2023
Date of Decision : 02.06.2023

Amarjit Ram

....Petitioner

VERSUS

Vikas Aggarwal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Dhawan, Advocate for the petitioner.

Mr. Amit Jain, Sr. Advocate with
Mr. Dhruv Mittal, Advocate for respondent Nos.1 to 3.

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ALKA SARIN, J.

1. The present revision petition under Article 227 of the Constitution of India has been preferred by the plaintiff-petitioner challenging the order dated 02.03.2017 passed by the First Appellate Court allowing the application for additional evidence filed by defendant-respondent Nos.1 to 3.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration, possession and permanent injunction challenging certain sale deeds and power of attorneys. The defendant-respondent Nos.1 to 3 contested the suit and filed their written statement claiming to be lawful and bonafide purchasers vide sale deeds of 2009-10 for valuable consideration. The suit was also contested by some of the other

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defendants. The Trial Court *inter alia* found that the general power of attorneys purportedly executed by the plaintiff-petitioner were never executed and, therefore, there was no question of any person having a right to execute further sale deeds, attorneys' or special power of attorneys'. Consequently, vide judgment and decree dated 24.02.2015 the suit of the plaintiff-petitioner was decreed. In March 2015, the defendant-respondent Nos.1 to 3 filed an appeal against the judgment and decree of the Trial Court. In January 2017, defendant-respondent Nos.1 to 3 filed an application before the First Appellate Court for production of additional evidence. The defendant-respondent Nos.1 to 3 sought to produce as additional evidence certain jamabandies for the year 1997-98, 2002-03 and 2007-08 of Village Boot, Tehsil and District Jalandhar, certified copy of sale deed No.7289 dated 10.02.1988 executed by Kishan Chand - General Power of Attorney of Smt. Parvati in favour of Satwinder Singh son of Sadhu Singh, certified copy of sale deed No.3161 dated 25.06.1992, executed by Tirtho Devi - Special Attorney of Kishan Chand-General Attorney of Jagat Ram in favour of Rupinder Singh, certified copy of sale deed No.1156 dated 21.06.2000 executed by Sushil Grover - General Attorney of Rupinder Singh in favour of Rubinder Kaur, certified copy of registered sale deed No.1158 dated 21.06.2000 executed by Sushil Grover - General Attorney of Rupinder Singh in favour of Parminder Singh, certified copy of sale deed No.7759 dated 07.03.2005 executed by Poonam Gagneja in favour of Dharminder Ahuja and Davinder Ahuja, certified copy of sale deed No.4066 dated 19.10.2005 executed by Rubinder Kaur in favour of Sangeeta Kansra, certified copy of sale deed No.4067 dated 19.10.2005

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executed by Parminder Singh in favour of Sangeeta Kansra, certified copy of sale deed No.8091 dated 27.02.2008 executed by Gurcharan Dass - General Attorney of Naveen Kumar in favour of Radhe Buildtech, certified copy of sale deed No.5268 dated 06.11.2006 executed by Satwinder Singh in favour of Naveen Kumar as well as jamabandies for the year 1997-98, 2002-2003 and 2007-08. The plaintiff-petitioner herein filed a reply to the said application and contested the same. Vide impugned order dated 02.03.2017 the First Appellate Court allowed the application for additional evidence. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner has contended that the First Appellate Court has erred in accepting the application for additional evidence. According to the counsel, vide the impugned order the defendant-respondent Nos.1 to 3 were being permitted to fill in the lacunae in their case and improve their appeal, which could not be permitted in law. It is further the contention that defendant-respondent Nos.1 to 3 had not fulfilled the requirement of Order 41 Rule 27 CPC and, therefore, their application deserved to have been rejected. In support of his arguments, counsel has relied upon **Rekha Vs. Smt. Ratnashree [2006 (1) RCR (Civil) 685]**, **Khushi Ram & Ors. Vs. Smt. Findhi & Ors. [AIR 2003 HP 23]**, **Kamlesh Rani Vs. Balwani Singh [2010 (62) RCR (Civil) 239 (HP)]**, **Smt. Krishana Vs. Magha Ram & Anr. [2010 (2) RCR (Civil) 91]**, **Keshav Kumar Arora Vs. Atma Nand Jain Sabha [2001 (2) Rent LR 322]** and **Mohinder Singh Vs. Narain Singh & Ors. [1963 PLR 195]**.

4. *Per contra*, learned counsel for defendant-respondent Nos.1 to 3 has contended that the revision petition is not maintainable against the

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interlocutory order passed by the First Appellate Court and that the plaintiff-petitioner can challenge such an order at the time of filing of the second appeal, if the need so arises. It is also contended that the First Appellate Court can always allow additional evidence where it is felt that such documents are necessary for deciding the real controversy. Learned counsel has placed reliance upon **Gurdev Singh Vs. Mehnga Ram [1997 (3) RCR (Civil) 711 (SC)]**, **Ram Niwas Vs. Kalu Ram & Anr. [2012 (3) PLR 190]**, **Gurdial Singh & Ors. Vs. Mam Chand & Ors. [2011 (1) RCR (Civil) 690]** and **Rattan Singh & Ors. Vs. Nirmal Gill and Ors. [2021 (15) SCC 300]**.

5. I have heard the learned counsel for the parties.

6. An application under Order 41 Rule 27 CPC was filed by the defendant-respondent Nos.1 to 3 before the First Appellate Court. A perusal of the said application, which has been appended with the revision petition, reveals that it nowhere states that despite due diligence the evidence now sought to be produced could not be produced earlier or that such evidence was not within his knowledge or could not be produced after due diligence.

7. Order 41 Rule 27 CPC reads as under :

“27. Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to the produced, by an Appellate Court, the court shall record the reason for its admission.”

8. There can be no quarrel with the proposition of law as laid down in **Gurdev Singh’s** case (supra). However, since the impugned order is wholly without jurisdiction having been passed in very casual manner, this Court deems it appropriate to interfere with the said order. Firstly, the application itself is totally bereft of any reason or even a whisper as to why the evidence now sought to be produced could not be led earlier. Further, the First Appellate Court vide the impugned order dated 02.03.2017 has taken on record as additional evidence various sale deeds as well as

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jamabandies. It is trite that a registered sale deed is not a public document but a private document and production of the sale deed does not dispense with need for proof of execution of the document. The First Appellate Court, treating the sale deeds as if they were *per se* admissible in evidence, has allowed the additional evidence which cannot be permitted in law. The First Appellate Court in the impugned order inter-alia held that “*Moreover, the documents which the appellants want to produce are very necessary for the just decision of the case and to adjudicate the matter properly and documents sought to be produced are perse admissible documents*”. This conclusion is not sustainable. A sale deed would have to be proved in accordance with the provisions of law. Thus, this Court is compelled to interfere in the discretion exercised by the First Appellate Court since the discretion exercised is not in accordance with law.

9. In view of the above, the present revision petition is allowed and the impugned order dated 02.03.2017 is set aside. The matter is remanded to the First Appellate Court to decide the application for additional evidence afresh and in accordance with law. Pending applications, if any, also stand disposed off.

10. It is made clear that any observation made hereinabove shall not be treated as an expression of opinion on the merits of the case.

02.06.2023

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(ALKA SARIN)

JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO