

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(119)

CR No. 396 of 2023

Date of Decision : 23.01.2023

Bhagat Singh

...Petitioner

Versus

Municipal Corporation, Gurgaon and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashok Kumar Jindal, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

The present civil revision petition has been filed against the interlocutory order dated 11.01.2023 (Annexure P-5) passed by the trial court by which, application under Order 39 Rule 2A CPC moved by the respondent/defendant so as to de-exhibit certain documents, which were taken on record in the rebuttal evidence furnished by the petitioner/plaintiff, has been dismissed.

Learned counsel for the petitioner argues that while considering the application filed by the respondent-Municipal Corporation under Order 39 Rule 2A CPC, certain issues were framed to be decided by the court and in pursuance to the said issues, evidence was lead by the Municipal Corporation as well as by the petitioner-Bhagat Singh, who was the respondent in the application filed by the applicant-Municipal Corporation under Order 39 Rule 2A CPC.

Petitioner/plaintiff Bhagat Singh had filed a civil suit No. 2475 of 2015 titled as ***Bhagat Singh and others Vs. Municipal Corporation, Gurgaon***, against the respondent-Corporation for permanent injunction, wherein, an interim order dated 17.09.2015 was passed directing the parties to maintain status quo with respect to the property in question, which interim order was alleged to be violated and the Municipal Corporation, Gurgaon filed an application under Order 39 Rule 2A CPC against the petitioner/plaintiff Bhagat Singh alleging that Bhagat Singh has violated the said interim order passed. It may be noticed here that during the pendency of the said application, the main civil suit has already been dismissed vide order dated 19.07.2018 (Annexure P-2A), though the appeal is stated to be pending before the lower appellate court.

Issues were framed by the court in respect of the application filed by the respondent-defendant/Municipal Corporation under Order 39 Rule 2A CPC and Municipal Corporation led the evidence after which, the petitioner/plaintiff Bhagat Singh also led the evidence. Thereafter, the case was put up for rebuttal evidence on 13.09.2022. In rebuttal evidence, respondent-defendant/Municipal Corporation, Gurgaon produced certain photographs, which were exhibited as D1 and D2 and copy of the judgment dated 19.07.2018, which was exhibited as mark 'A'. The said documents were exhibited in the rebuttal evidence.

Thereafter, the petitioner/plaintiff-Bhagat Singh filed an application for removing the exhibits, which were taken on record under the rebuttal evidence on 13.09.2022. The said application has been decided by the trial court on 11.01.2023 (Annexure P-5) holding that at the time when

the rebuttal evidence was led, no objection was taken by the petitioner/plaintiff-Bhagat Singh from exhibiting those documents at the relevant stage and only objection, which was raised, was qua the mode of proof of the photographs, which objection was to be decided at the time of the final order and now, the objection in the application that all the documents in rebuttal evidence, which were taken on record, be de-exhibited, cannot be done as the photographs are already on file. The said order of the trial court dated 11.01.2023 is under challenge in the present civil revision petition.

Learned counsel for the petitioner-Bhagat Singh argues that at the first instance itself, no opportunity of rebuttal evidence could have been extended to the respondent-defendant/Municipal Corporation, Gurgaon as the said concession for leading rebuttal evidence was never reserved by the Municipal Corporation while leading the evidence at the final stage in support of their application filed under Order 39 Rule 2A CPC, hence, allowing of the rebuttal evidence is contrary to the settled principle of law, therefore, the documents, which have been taken on record in rebuttal evidence being contrary to the settled principle of law, should be removed from the record and be de-exhibited. In support of his contention that rebuttal evidence was led without reserving the right, learned counsel for the petitioner/plaintiff places reliance upon the judgments of this Court in CR No. 2203 of 2010 titled as *Avtar Singh and another Vs. Baldev Singh and other*, decided on 21.11.2014, CR No. 299 of 2016 titled as *Billi Mahant Vs. Roopa Mahant Chela Krishna Mahant*, decided on 08.08.2022, CR No. 1774 of 2021 titled as *Satpal Vs. Murti Devi and*

others, decided on 02.09.2021, CR No. 926 of 2021 titled as ***Harbans Singh Vs. Malook Singh and others***, decided on 23.04.2021 and CR No. 5466 of 2016 titled as ***Hardial Singh Vs. Davinder Singh***, decided on 06.01.2020.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

The question, which arises for the determination is that whether, once the documents have been taken on record in rebuttal evidence on 13.09.2022, the same can be de-exhibited or not. Learned counsel for the petitioner has conceded before this Court that there is no provision under the CPC so as to de-exhibit the documents, which had already taken on record and exhibited hence, in the absence of any such provision, once a document has been exhibited, the same cannot be de-exhibited.

Further, Hon'ble Supreme Court of India in SLP No. 14882-14883 of 2022 titled as ***Sirikonda Madhava Rao Vs. N. Hemlatha and others***, decided on 14.11.2022, wherein a direction given by the High Court to de-exhibit the documents, held the said order to be bad in law as no provision of law pending permits the de-exhibiting of a document. The relevant paragraph of the said judgment is as under :-

“Leave granted.

It is accepted that the document dated 14.04.1993 purporting to be an unregistered sale deed was marked as Exhibit No. A-1 on 27.11.2006.

In view of the aforesaid position, we do not think that the impugned judgment passed by the High Court directing that the aforesaid document should be de-marked and not be treated as an exhibit, is correct and in accordance with law.

Once a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or proceedings on the ground that the instrument has not been duly stamped. Objection as to admissibility of a document on the ground of sufficiency of stamp, has to be raised when the document is tendered in evidence. Thereafter, it is not open to the parties, or even the court to re-examine the order or issue. To this extent, the impugned judgment is set-aside and the appeal is allowed.

We clarify that we have not commented or examined the question of effect of purported non-registration of the sale deed in terms of the Transfer of Property Act, 1882 and the Registration Act, 1908. These questions and issues are left open to be decided by the trial court. All pleas and contentions raised by the parties in this regard can be raised before the trial court, which will examine the said aspect and other issues without being influenced by the present order and the impugned judgment.

The appeals are allowed in the aforesaid terms, without an order as to costs.

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

A bare perusal of the above would show that as per the Hon'ble Supreme Court of India, it is not open to the parties or even to the court to re-examine the order or issue as to whether, a document, which has already been tendered, can be de-exhibited. That being so, no infirmity can be found in the order dated 11.01.2023 passed by the trial court dismissing the application filed by the petitioner/plaintiff seeking removal/de-exhibiting of the documents concerned.

Learned counsel for the petitioner/plaintiff further submits that in the present case, there was no occasion so as to grant an opportunity of

rebuttal evidence to the Municipal Corporation, Gurgaon, which opportunity was granted to the Municipal Corporation, Gurgaon on 13.09.2022. Though, no comments can be made at this stage qua the grant of said opportunity but once, as a matter of fact, the rebuttal evidence has been allowed and the documents have been placed on record and as per the judgment of the Hon'ble Supreme Court of India in ***Sirikonda Madhava Rao (supra)***, the same cannot be looked into qua de-exhibiting the same, no findings are needed to be recorded on the said question of law being raised.

Further, it has been mentioned in the order dated 11.01.2023 that at the relevant time, when the rebuttal evidence was led, no objection was taken by the petitioner/plaintiff at the relevant time/stage and the only objection raised was qua the mode of proof of photographs, hence, even otherwise keeping in view the said statement recorded by the court below, the petitioner/plaintiff is barred from raising the present dispute in the present civil revision petition.

No ground is made out for interference in the order dated 11.01.2023 by this court.

Dismissed.

January 23, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No