

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

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CR-4228-2018 (O&M)

Date of Decision : 16.02.2023

Indu Bala

....Petitioner

VERSUS

Raj Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. V.K. Sandhir, Advocate for the petitioner.

Mr. Anupam Bhardwaj, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 09.05.2018 whereby an application filed by the plaintiff-respondent No.1 for additional evidence has been allowed at the stage of final arguments.

The brief facts relevant to the present lis are that the plaintiff-respondent No.1 filed a suit for possession of land bearing Khewat No.2246, Khatoni No.3432, Khasra No.6988/1364/6 measuring 0 kanals 8 marlas as per jamabandi for the year 2005-06 situated in village Sultanwind Sub Urban Taraf Behniwal Tehsil and District Amritsar, with consequential relief of permanent injunction restraining the defendants from raising any construction, alienating or disposing of the property in any manner and also a decree for mandatory injunction for demolishing any part of the construction on the property in dispute. The suit was filed on 15.12.2012.

Thereafter, an application for amendment of the plaint was filed by the plaintiff-respondent No.1 which was allowed on 20.11.2015. The first application for amendment of the plaint was filed through Baldev Singh, the power of attorney holder of the plaintiff-respondent No.1. Thereafter, a second application for amendment of the plaint was filed which was allowed on 17.02.2017. The said application was also filed through the power of attorney holder of the plaintiff-respondent No.1. Thereafter, the evidence was closed and the matter was heard on various dates. Arguments were finally concluded on 13.04.2018 and it is then that an application was filed for additional evidence by the plaintiff-respondent No.1, this time in her own name stating therein as under :

“3. That earlier husband of the plaintiff appeared as PW-1. He deposed in the case being an attorney of his wife. Even otherwise being husband he has all personal knowledge regarding the facts and circumstances of the case. That the power of attorney executed by her in favour of his husband is dated but the applicant has purchased the suit property vide sale deed dated 14.08.2006

4. That due to inadvertence it has been mentioned in the examination in chief that he is deposing being the attorney but that attorney was given earlier for other properties but the present property is purchased afterward.

5. *That the applicant has come to knowledge of this fact after the conclusion of the evidence which was not in her knowledge earlier.”*

By way of additional evidence, the plaintiff-respondent No.1 wanted her statement to be recorded. Reply was filed to the said application. Vide the impugned order dated 17.05.2018, the application for additional evidence was allowed. Hence, the present revision petition.

Learned counsel for the defendant-petitioner would contend that throughout all applications were filed through the power of attorney holder of the plaintiff-respondent No.1 and the said power of attorney holder also stepped into the witness box on behalf of the plaintiff-respondent No.1 as PW-1 and was cross-examined in detail and it was only at the stage after the arguments had concluded that the present application was filed to fill in the lacuna in the case.

Per contra, learned counsel for the plaintiff-respondent No.1 has contended that the application is only for additional evidence and not an application for amendment that it would change the nature of the case. It is further the contention that since the application is by the plaintiff-respondent No.1, any delay in the suit would be to her detriment and there would be no loss or injury caused to the defendant-petitioner.

Heard.

In the present case the plaintiff-respondent No.1 filed a suit for possession initially in her own name and thereafter all applications were filed by her through her power of attorney holder, Baldev Singh, who is her husband. The said Baldev Singh also stepped into the witness box as PW-1

and was cross-examined in detail. The suit was filed in the year 2012 and the first application for amendment of the plaint was filed in 2015. Thereafter, a second application for amendment of the plaint was filed by the plaintiff-respondent No.1 through her power of attorney. It is only after the arguments had concluded on 13.04.2018 that the present application was filed for leading additional evidence. It is trite that an application for additional evidence cannot be permitted to fill-in the lacuna in the case. In the present case it is unbelievable that the plaintiff-respondent No.1 was not aware that the general power of attorney in favour of her husband was dated 09.07.2001 and that the property was purchased on 14.08.2006. The arguments in the present case had already been concluded when the present application was filed. The application is nothing but an endeavor to fill-in the lacuna in the case.

In view of the above, the present revision petition is allowed and the impugned order dated 09.05.2018 is set aside and the application for additional evidence is dismissed. Pending applications, if any, also stands disposed off.

It is made clear that any observations made herein above shall not be treated as an expression of opinion on the merits of the case.

February 16, 2023
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(ALKA SARIN)
JUDGE

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