

238

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

C.R NO. 4838 OF 2018 (O&M)

DATE OF DECISION: 01.05.2023

Mahander and others**...Petitioners****Versus****Ajit and another****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. D. K. Tuteja, Advocate,
For the petitioners.

Mr. Sunil Chadha, Senior Advocate with
Mr. Tara Dutt, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting-aside order dated 23.05.2018 (Annexure P-6) allowing additional evidence as well as impugned order dated 30.05.2018 (Annexure P-8) permitting tendering of additional evidence, allegedly beyond the scope of application (Annexure P-5) and also impugned is another order dated 23.05.2018 passed by learned Civil Judge (Junior Division), Rohtak, vide which application for additional evidence was allowed.

2. Succinct facts first.

2.1. Plaintiff/respondents have filed a suit against petitioner/defendants for permanent injunction seeking to restrain them from dispossessing respondents permanently along with an application under Order 39 Rules 1 and 2 CPC.

2.2. Petitioner/defendants are contesting the suit before the trial Court and have denied the claim of respondent/plaintiffs.

2.3. On the basis of pleadings of parties, learned trial Court framed the issues on 10.10.2012 and adjourned the case for evidence of plaintiffs for 21.11.2012. Respondent/plaintiffs availed as many as 22 effective opportunities and thereafter plaintiffs voluntarily closed their oral evidence on 14.05.2015. Plaintiffs then availed several opportunities to produce documents. Ultimately, learned trial Court closed the evidence of plaintiffs vide order dated 14.10.2016 (Annexure P-3 colly). Defendants then led their evidence. Suit was dismissed in default on 09.01.2017 but restored on 06.07.2017.

2.4. Respondent/plaintiffs also led rebuttal evidence and examined as many as six witnesses. They also tendered report of Local Commissioner Ex.Px in the evidence (Annexure P-4 colly). Thereafter, they moved application (Annexure P-5) on 01.03.2018, seeking permission to lead additional documentary evidence.

2.5. Upon notice of the application, same was contested by defendant/petitioners and sought dismissal of same.

2.6. Learned trial Court allowed the application vide order dated 23.05.2018 (Annexure P-6) impugned herein alleging that way beyond the scope of application (Annexure P-5) as many as 20 documents have been tendered. The documents have been permitted vide another order dated 30.05.2018 (Annexure P-8) which is also assailed herein.

3. I have heard learned counsels for parties and have gone through the records.

4. While I am in agreement with the learned counsel for petitioners in canvassing that once learned trial Court below had closed the evidence by order, then plaintiff/respondents could not have filed an application seeking additional evidence as the same would amount to overreaching previous judicial order dated 14.10.2016 (Annexure P-3 colly) rendering it a complete nullity. Especially, when the same had attained finality since no further recourse to challenge the same was ever taken. No doubt, in matters of adversarial proceedings, quietus has to be given at some stage to the rival contentions. Learned counsel for petitioners thus argues that the plaintiff/respondents had acquiesced in judicial order closing the evidence by not challenging the same and thus it has attained finality. However, my attention has been drawn by learned senior counsel for respondents to the averments made in para 2 of the plaint, which reads as below:

“xxx

2. That the plaintiffs and other co-sharer are owner and possession of Plot No.603 sq. yards plot No.609 measuring 177 sq. yds Plot No.788 measuring 1260 sq. yards vide khatoni No.251 which was allotted in a civil suit titled Sheoji v. Dharma decided by Senior Sub Judge Rohtak dated 03.08.1982. Copy of Khatoni Takseem, Copy of Field Book and Aks-sazra are attached here with the plaint, situated in the Abadi de of village Kiloi Dopana Tehsil and District Rohtak.
xxx”

5. Perusal of the above clearly reflects that at the very inception of the suit, it had been an affirmative pleading of

respondent/plaintiffs that they wish to rely on Khatoni Takseem, field book and *Aks Sajra* of the suit land which is situated in abadi deh of the village and it was specifically pleaded that copies of same were also attached with the plaint. In fact, list of documents (Annexure P-9) appended with the plaint also mentions these three documents serialim 1 to 3.

5.1. Furthermore, it is also averred in same very para (supra) that plaintiffs are co-sharer/owners in possession of the suit property by virtue of a decree dated 03.08.1982 granted in their favour in earlier civil suit titled “*Ishwar Singh and others v. Mahander and others*” decided by Court of learned Senior Sub Judge, Rohtak. No doubt, it is not coming out very clearly from para 2 of the averments, as aforesaid, if copy of said decree was appended with the plaint or not. In fact, in the list of document (Annexure P-9), said decree is mentioned at serial number 4, though scored off later on. It appears that plaintiffs were not readily in possession of same and therefore, it has been scored-off by putting a line on the same.

6. Be that as it may, certified copy of the judgment being *per se* admissible, I see no reason as to why same cannot be subsequently adduced in evidence, once copy of same has been obtained by plaintiffs. In this context judicial order dated 01.03.2018 (Annexure P-4) of Court below referring to application for additional evidence is of some significance and same for ready reference is reproduced herein below:

“ Today the case is fixed for rebuttal evidence if any and for argument. PW5 Joginder and PW3 Virender are

not present for their cross-examination. At this stage, ld. Counsel for the plaintiff moved an application under Order 18 Rule 17-A of CPC for seeking permission to adduce additional evidence read with Section 151 CPC. Copy given. Reply to the said application on behalf of defendants filed. Copy given. Now, the case is adjourned to 14.03.2018 for cross-examination of deferred witnesses as well as for remaining PWs in rebuttal evidence, if any and for arguments.”

7. Perusal of the same shows that learned trial Court was under impression that documents sought to be relied were not on record on the date of passing of order. However, list of documents which was filed with the plaint (Annexure P-9) reflects otherwise. Certified copy of decree dated 08.03.1982, as already observed herein is *per se* admissible document, I see no reason why the same cannot be produced, provided of course if learned Court below is satisfied with regard to relevancy of same as well as sufficiency of reasons for not producing it earlier.

8. In totality of circumstances, I am of the view that in order to meet the ends of justice and balance the equities if order impugned herein is modified to the extent that only those documents which have been pleaded and mentioned in para 2 of the plaint and in para 2 of application shall be allowed to be adduced in evidence. For better clarification, said documents as are enumerated in para 2 of application (Annexure P-5), are adumbrated below:

- i) *Copy of the decree dated 08.03.1982 titled Sheoji v. Dharama;*
- ii) *Copy of Khatoni Takshim of above decree relating to the plaintiff's plot as ownership;*
- iii) *Copy of Field book Khatoni Takshim of above decree relating to the plaintiff's plot as ownership;*
- iv) *Copy of Aks Sajra;*
- v) *Copy of plaint of above said decree;*

- vi) *Copy of partition proceedings; and*
- vii) *Copy of execution and demarcation of decree dated 08.03.1982.”*

9. Needless to say that allowing additional evidence would result in the right of petitioner/defendants to lead further evidence to refute plaintiff's version. Qua that aspect learned trial Court is at liberty to proceed in accordance with law.

MAY 01, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No