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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4944-2017 (O&M)
Reserved on : 17.05.2023
Date of decision : 29.05.2023

Balram Sareen ... Petitioner(s)

Versus

Rajesh Bhalla and Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Sirphikhi, Advocate for the petitioner.

Mr. Harminder Singh, Advocate for respondent Nos.1 to 3.

None for respondent Nos.4 and 5.

ALKA SARIN, J.

1. The present revision petition has been preferred under Article 227 of the Constitution of India challenging the order dated 01.07.2017 (Annexure P-6) vide which the application filed by the defendant-petitioner herein for de-exhibiting the documents i.e. site plan (Ex.P6 and Ex.P7) has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 to 3 herein filed a suit for permanent injunction for restraining the defendant-petitioner and others from illegally and forcibly interfering in their possession as owners of the suit property and in the

alternative for possession of the suit property. The plaintiff-respondent Nos.1 to 3 led their evidence. One of the witnesses, namely, Sukhdev Singh, Clerk, MC Batala, stepped into the witness box as PW3 and two documents (Ex.P6 and Ex.P7) were exhibited. An application was thereafter filed for de-exhibiting the documents (Ex.P6 and Ex.P7) on the ground that PW3 specifically stated that Municipal Committee had no record of the copy of the alleged site plan and that the evidence was recorded in the absence of the counsel for the defendant-petitioner and the documents were exhibited as Ex.P6 and Ex.P7, which had not come to the custody from the official witness. Vide the impugned order dated 01.07.2017 the said application was dismissed holding that the document once exhibited could not be de-exhibited. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioner has contended that the evidence was recorded in the absence of the counsel and therefore the objections could not be taken qua the mode of proof. Learned counsel has further contended that when an objection is raised regarding exhibiting of a document the same needs to be decided by the Court. In support of his contentions, learned counsel has relied upon the judgments in the cases of **Subhash Babu Patil Vs. State of Maharashtra & Anr. [2008 (4) RCR (Civil) 819]**; **Girdhari Lal Vs. Ritesh Mahajan & Anr. Vs. Ritesh Mahajan & Anr. [2005 (4) RCR (Civil) 349]**; **Jasjit Singh & Anr. Vs. Prem Harjit Singh & Anr. [2013 (1) RCR (Civil) 514]**; **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Ors. [2003 (8) SCC 752]**; **Bipin Shantilal Panchal Vs. State of Gujarat [2001 (3) SCC 1]**; **Hemendra Rasiklal Ghia Vs. Subodh Mody [2009 (3)**

RCR (Civil) 1] and Nazar Singh Vs. Kulbir Kaur & Ors. [2019 (1) RCR (Civil) 374].

4. *Per contra*, learned counsel for the plaintiff-respondent Nos.1 to 3 has contended that the argument of learned counsel for the defendant-petitioner that the evidence was recorded in the absence of the counsel for the defendant-petitioner is demolished from the very fact that on the same day i.e. 19.04.2017, it had been recorded by the Court that the cross-examination of the witness PW3 had been deferred on the request of learned counsel for the defendants. Learned counsel has further contended that there is no provision in law for de-exhibiting of documents. In support of his contentions, learned counsel has relied upon the judgments in the cases of **Municipal Council Kapurthala Vs. Chaman Lal & Anr. [2015 (42) RCR (Civil) 738]; Gurvinder Singh Vs. Taranjit Singh [2022 (2) RCR (Civil) 432]; Smt. Jaswant Kaur Vs. Satish Kumar Aggarwal & Ors. [2016 (4) PLR 632]; Bipin Shantilal Panchal Vs. State of Gujarat [2001(3) SCC 1] and Sait Tarajee Khimchand & Ors. Vs. Yelamarti Satyam & Ors. [1972 (4) SCC 562].**

5. I have heard learned counsel for the parties.

6. In the present case, no objection was raised at the time of the exhibiting of the documents Ex.P6 and Ex.P7. Hon'ble Supreme Court in the case of **R.V.E. Venkatachala Gounder** (supra), a judgment relied upon by learned counsel for the defendant-petitioner, has held as under :

“18. Order 13 Rule 4 of the Civil Procedure Code provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which

endorsement signed or initialled by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.”

7. There is no quarrel with the argument of learned counsel for the defendant-petitioner that once a document is tendered in evidence, if an objection is raised qua mode of proof, the objection qua admissibility needs to be decided by the Court therein and it cannot be deferred. However, as held by the Hon’ble Supreme Court in the case of **R.V.E. Venkatachala Gounder** (supra), the said objection has to be taken regarding admissibility before the endorsement is made by the Court or on behalf of the Court concerned, which endorsement is signed or initialed by the Judge. The argument of the counsel for the defendant-petitioner that the examination was conducted in the absence of the counsel is belied by the fact that cross-examination was deferred at his request. Not having raised the objection regarding the mode of admissibility prior to the endorsement being made by the Court on the document sought to be exhibited, the objection cannot be taken subsequently by moving an application for de-exhibiting of a document.

8. It is trite that mere exhibition of a document does not dispense with the proof of its execution. The veracity and genuineness of the document has to be tested at the relevant stage.

9. In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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