

227.

2023:PHHC:147440

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

CR-5714-2016 (O&M)

Date of decision: 20.11.2023

Gurmukh Singh

.... Petitioner

Versus

Sulakhan Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

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

Mr. H.S. Batth, Advocate, for the respondents.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India read with Section 151 CPC is for setting aside the order dated 05.08.2016 (Annexure P-5) passed by learned District Judge, Tarn Taran, whereby the application moved by the respondents No.1 and 2-plaintiffs under Order 41 Rule 27 CPC to lead additional evidence has been allowed.

2. The brief facts, as culled out from the petition, are that respondents No.1 and 2-plaintiffs filed a suit for declaration to the effect that they are owners in possession of the suit land, as mentioned in the headnote of the plaint, and for permanent injunction. Petitioner-defendant No.1 contested the suit, filed written statement. Defendant No.2-proforma respondent No.3 was proceeded against ex-parte. On the basis of pleadings of parties, issues were framed. Vide judgment and decree dated 12.11.2014, learned trial Court dismissed the suit. The plaintiffs filed appeal and also

moved an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence. The learned appellate Court allowed that application vide order dated 05.08.2016 and the respondents-plaintiffs were allowed to produce and prove the original sale deeds dated 30.05.1977, 28.05.1975 and 30.09.1983 as pleaded in the plaint and report was called for from the concerned court. It is the said order which has been challenged in this revision petition.

3. Learned counsel for the petitioner-defendant No.1 has argued that the respondents-plaintiffs pleaded negligence of their counsel in the trial Court who failed to produce and prove the original sale deeds. The plaintiffs were never refused to lead their evidence. The evidence was within their knowledge but they failed to produce the same. The case of the plaintiffs was based on sale deed dated 30.09.1983 as alleged to be executed by the petitioner-defendant No.1 and they only produced photocopy of the same. The learned trial Court also observed that the plaintiffs-respondents failed to prove the original sale deeds in their favour, so they cannot be allowed to fill the lacuna. Moreover, there is no evidence whether sale deeds were handed over to the counsel. It is not the case that the plaintiffs-respondents, despite due diligence, failed to prove the evidence and the Court required judicial evidence to enable it to pronounce judgment. Reliance is placed in the case ***Malayalam Plantations Limited Versus State of Kerala and another, 2011 AIR (SC) 559*** and ***Lekhraj Bansal Versus State of Rajasthan and another, 2015(7) R.C.R. (Civil) 473***, the authorities of Hon'ble the Supreme Court.

4. Learned counsel for the respondents No.1 and 2-plaintiffs has argued that photocopies of the sale deeds were already produced on the

record and even sale deed dated 30.09.1983 was not denied by the petitioner, but it was pleaded that said sale deed was fraudulently got executed and there were entries in the jamabandi. The presumption also attaches to the entries in the jamabandi, although said presumption is refutable, but no such evidence has been led. There was no fault on the part of the respondents-plaintiffs, but their counsel failed to prove the same and said documents are necessary for the just decision of the case. The order passed by the learned appellate Court in the application is in accordance with law.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. The respondents-plaintiffs, appellants-applicants before the learned Appellate Court, moved an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence. Paras No.6 and 7 of said application read as under:-

“6. That the appellants has given the said original sale deed dated 30-09-1983 to their counsel at the time of leading their evidence before the trial Court for producing the same in the court, but the said counsel of the appellants has not produced the same in the learned lower court. It is the gross negligence of the previous counsel for the appellants, due to which the appellants had suffered.

7. That now by way of additional evidence the applicants/appellants wants to produce and prove the original Sale Deed dated 30-05-1977, original sale deed dated 28-05-1975 and original Sale Deed dated 30-09-1983, as pleaded in the plaint, by examining the attesting witnesses, registry clerk and deed writer.”

7. The petitioner-defendant No.1-Gurmukh Singh filed reply to said application. Paras No.6 and 7 of said reply read as under:-

“6. That para no.6 of the application is incorrect and denied specifically. The appellants intentionally with malafide shifting their own negligence on the shoulders of their counsel just to make their plea of leading additional evidence. As per the provision and law laid down under Order 41 Rule 27 CPC application is not maintainable. Change of lawyer is no ground to allow the additional evidence which was in the knowledge of the appellants when the opportunity was there in the lower court.

7. That para no.7 of the application is incorrect and denied specifically. By allowing the present application a fresh trial of the suit will restore from the very beginning of hearing, thereby causing huge financial loss and mantle harassment to the respondents/defendants.”

8. The learned appellate Court while relying in case ***Shavitri and others Versus Ram Niwas and others, 2015(4) Law Herald 3433***, the authority of this Court, held that the appellate Court has power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment but also for any other substantial cause. It is the specific case of the respondents-appellants that the original sale deeds were handed over to their counsel, but he failed to prove the same whereas photocopies of the sale deeds were produced in the trial Court and moreover, there are entries in the jamabandi i.e. record of rights regarding the property owned by the appellant on the basis of sale deed. The purpose of the Court is to do complete justice between the parties and mere technicalities should not be a

stumbling block in the cause of justice. In case ***Malayalam Plantations Limited (supra)***, no order was passed by the High Court on the application under Order 41 Rule 27 CPC. It is held that it is the duty of the High Court to consider the case and it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance or bearing in the issues involved. The High Court was asked to decide the application under Order 41 Rule 27 CPC in accordance with law. The case ***Lekhraj Bansal (supra)*** pertains to correction of date of birth and the appellant wanted to produce copy of date of birth issued by the Municipal Council, Ajmer. It was held that it was not the case of the appellant that the said evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him during pendency of the suit before the trial Court.

9. In the case in hand, it is the specific case of the respondents-plaintiffs, applicants-appellants before the learned appellate Court that the original sale deeds were handed over to the counsel who failed to produce and prove the same whereas photostat copies of sale deeds were produced and moreover said evidence is necessary for doing complete justice to the parties, so I do not find any infirmity in the order passed by the court below and this revision petition is, accordingly, dismissed.

10. Pending application, if any, shall stand disposed of.

November 20, 2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(GURBIR SINGH)
JUDGE