

204

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

CR-1321-2019 (O&M)

Date of Decision: 18.04.2023

Ashok Kumar

....Petitioner

Versus

Madan Lal (since deceased) Through LR's.

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. J.P. Sharma, Advocate
for the respondent(s).

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 30.01.2019 (Annexure P-10) passed by Ld. Additional Civil Judge (Sr. Division), Narnaul, whereby application filed by petitioner/defendant under Order 23 Rule 3A CPC, for permission to produce additional evidence by producing expert report dated 28.02.2015 and for examination of the said expert as witness, was declined.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Original respondent/plaintiff – Madan Lal (since deceased) had filed a suit for declaration against petitioner to the effect that he was owner in possession of the suit property. The said suit is alleged to have been instituted in the year- 1992. As per record, defendant/petitioner is alleged to have appeared in the said suit and filed written statement and Ld. Court decreed the suit of respondent/plaintiff in view of the fact that parties were not at issue. However,

petitioner/defendant had never appeared in the said suit and respondent/plaintiff by fraud/coercion/producing some impostor got the written statement filed by forging signatures of petitioner/defendant and got a decree in his favour. Petitioner came to know of the decree of the year 1992 only in December-2007, when respondent/plaintiff, on the basis of fraudulent judgment and decree, started claiming himself to be the owner of the property in question.

2.2. Petitioner, thus, filed application (Annexure P-3) under Order 23 Rule 3A CPC for getting the said judgment and decree dated 06.08.1992 set aside. Issues on the application were framed and parties were directed to lead evidence. However, vide judgment dated 30.01.2015 (Annexure P-4), application filed by petitioner/defendant was dismissed, holding the application to be barred by limitation.

2.3. Petitioner preferred appeal challenging judgment dated 30.01.2015 and along with the grounds of appeal (Annexure P-5) the petitioner also filed an application (Annexure P-6) for leading additional evidence for grant of permission to produce report of handwriting and finger expert (Annexure P-7) and also to examine him as witness. Ld. Appellate Court, vide judgment dated 21.08.2018 (Annexure P-8), allowed the appeal filed by petitioner/defendant and remanded the matter back to Ld. Trial Court to decide the case afresh. Although an application for leading additional evidence was also moved before Ld. Appellate Court, however, since the Ld. Appellate Court dealt with the issue of limitation only and remanded the matter back to Ld. Trial Court, no order was passed on the said application.

2.4. After remand, an application (Annexure P-9) was moved by petitioner before Ld. Trial Court to adduce additional evidence by placing on record report of

the handwriting and finger print expert and for permission to examine the said expert as witness. However, vide impugned order (Annexure P-10), Ld. Trial Court dismissed the said application.

3. Learned counsel for petitioner would argue that in fact, petitioner/defendant never engaged any counsel nor appeared in the case i.e. Civil Suit No.454 of 1992 and never suffered any statement during the proceedings of the case. But the same was done by some impersonator. It was stated that on earlier occasions, when the case was pending before Ld. Trial Court, request was made for grant of permission to examine expert and matter was adjourned by Ld. Court but on the adjourned date, expert of the petitioner could not come due to unavoidable circumstances and thereafter, the case was posted wrongly for arguments. Further, he would argue that while dismissing the application, the Ld. Trial Court wrongly relied on the judgment of this Court in ***Dinesh Kumar vs. State of Haryana and others, 2003(1) CCC 445*** by observing that when the case is fixed for final arguments, the application for additional evidence is not maintainable and thus petitioner cannot be allowed to delay the trial or to fill-up lacunae by moving such applications.

4. Learned counsel for respondent(s) opposes the revision by arguing that it is wrong to allege that petitioner/defendant did not appear before the Court on the date fixed and never engaged any counsel. Thus, the report prepared by the expert is false and fabricated.

5. Heard.

6. Given the assertion of petitioner/defendant that he neither engaged any counsel in the earlier Civil Suit No.454 of 1992 which he claims was decreed on fraudulent misrepresentation as well as by forging his signatures on written

statement, I am of the view that it is rather imperative that handwriting expert report dated 28.02.2015 (Annexure P-7) though of course, for the first time, sought to be produced by way of additional evidence before Ld. First Appellate Court, be taken on record by Ld. Trial Court since the matter has been remanded for a fresh decision by Ld. First Appellate Court. The respondent(s)/plaintiff can be compensated by costs for certain delay likely to be caused in adducing additional evidence by petitioner/defendant by summoning hand-writing expert.

7. Furthermore, I may also hasten to add here that Ld. Trial Court seems to have got rather over-swayed from the fact that matter was fixed for final arguments for fresh decision. Therefore, application for additional evidence would cause certain delay and ought not to be allowed. I am also unable to accept the reasoning for rejection of the application that the pleadings to this effect are very much contained in the written statement as well as testimony of the defendant’s witnesses. It cannot be suggested in the circumstances of the case that the application was filed belatedly to cover some lacuna earlier left by the petitioner/defendant.

8. In the totality of circumstances, the revision petition is allowed and impugned order is set aside subject to payment of costs of Rs.10,000/- to be paid to respondent(s).

9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 18, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No