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

**CR-1518-2020 (O&M)
Reserved on : 16.01.2023
Date of decision : 20.01.2023**

Sikandar Singh (deceased) through LR and anotherPetitioners

Versus

Paramjit Singh and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate for the petitioners.

Mr. Damanjit Singh Sandhu, Advocate for the respondents.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 29.01.2020 (Annexure P-1) passed by the Trial Court whereby the application of the plaintiff-petitioners for leading additional evidence has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners filed a suit for declaration to the effect that they are the owners of land measuring 19 kanals 15½ marlas and that the alleged sale deed dated 23.10.2006 bearing Vasika No.1258 dated 23.10.2006 alleged to have been executed by plaintiff-petitioner No.2 (Gurjit Singh) in favour of the defendant-respondent Nos.1 and 2 was illegal, null and void and not binding on the rights of the plaintiff-petitioners as also for permanent injunction. It

was the case set up by the plaintiff-petitioners that plaintiff-petitioner No.2 (Gurjit Singh) was mentally challenged and dumb from birth and that the defendant-respondents in connivance with each other got executed the sale deed in question by taking advantage of his state of mind. The plaintiff-petitioners are stated to have moved a petition under Sections 50, 51, 52, 53 and 54 of the Mental Health Act, 1987 for appointing a guardian of the person and property of plaintiff-petitioner No.2 (Gurjit Singh) and in the said petition, to ascertain the mental status of Gurjit Singh, he was referred for treatment/report to the Civil Hospital. After observation and examination, the doctor observed that plaintiff-petitioner No.2 (Gurjit Singh) was unfit and needed a guardian. Dr. Sudha Vasudev appeared before the District Judge and proved the report. An order dated 23.12.2014 was passed therein vide which Gurdeep Singh, the real brother of plaintiff-petitioner No.2 (Gurjit Singh) was appointed as his guardian. Though the report of Dr. Sudha Vasudev was produced during cross-examination conducted by the defendant-respondents and also placed on the judicial file, however, by way of the present application for additional evidence the plaintiff-petitioners sought to produce Dr. Sudha Vasudev as a witness. The said application was contested by the defendant-respondents on the ground that it had been filed only to linger the proceedings as the said report was dated 19.03.2014 and the application for leading additional evidence was filed on 03.07.2019. It was further the contention that the plaintiff-petitioners availed 29 effective opportunities and closed their evidence on 29.01.2015. It was also submitted that on 24.11.2015 an application for additional evidence was filed by the plaintiff-petitioners which was dismissed by the Trial Court vide order dated 06.01.2016. However, Civil Revision No.591 of 2016 filed by the plaintiff-

petitioners was allowed by this Court subject to payment of Rs.10,000/- as costs. It was further the contention that the present is the second application for additional evidence and that the report was well within the knowledge of the plaintiff-petitioners at the time of even filing of the first application for additional evidence. Vide the impugned order the Trial Court dismissed the said application for additional evidence moved by the plaintiff-petitioners. Hence, the present civil revision petition.

Heard.

In the present case the very case set up by the plaintiff-petitioners was that the plaintiff-petitioner No.2 (Gurjit Singh) was of unsound mind and the order passed by the District Judge appointing a guardian for plaintiff-petitioner No.2 (Gurjit Singh) was passed way back on 23.12.2014. The plaintiff-petitioners availed 29 effective opportunities and thereafter closed their evidence on 29.01.2015. Subsequently, an application for additional evidence was filed which eventually came to be allowed by this Court in CR-591-2016 subject to payment of Rs.10,000/- as costs. In the order dated 16.07.2018 passed in CR-591-2016, it had been noticed that the case, even at that point of time, was fixed for final arguments. The plaintiff-petitioners chose firstly not to lead the said evidence in the affirmative while leading their evidence and even subsequently they chose not to lead the said evidence when the first application for additional evidence was filed by them on 24.11.2015. A perusal of the present application for additional evidence also reveals that the same is totally bereft of any reasoning as to why the said witness could not be examined earlier. Additional evidence cannot be permitted to be led to fill-in the lacuna in the case. It is the case of the plaintiff-petitioners that the relevant documents are already on the record

and the only explanation which has been given before this Court for wanting to examine the said witness is so that the defendant-respondents cross-examine the said witness. This cannot be a ground for permitting additional evidence.

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.

Dismissed.

20.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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