

CR-1579-2020 (O&M)

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274

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1579-2020 (O&M)

Date of Decision : 29.03.2023

Ram Chander

....Petitioner

VERSUS

Ramdhari and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vivek Suri, Advocate for the petitioner.

Mr. Surinder Gaur, Advocate for respondent Nos. 1 and 2.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been filed for modification of the order dated 24.02.2020 whereby the application for leading additional evidence has partly been allowed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration with consequential relief of permanent injunction for declaring GPA No.3639/4 dated 24.09.2001, sale deed bearing No.1398 dated 28.05.2004, mutation bearing No.6647 dated 08.09.2007 and all the subsequent entries in the revenue record as illegal, null and void and not binding upon the rights of the plaintiff-petitioner. During course of proceedings, an application for permission to produce

additional evidence was filed by the plaintiff-petitioner and the following documents were sought to be produced :

- (i) Certified copies of the statements of Ramchander, Narender Deshwal, Bijender, Satbir, Ramdhari, Dhajja Ram, Baljit Singh, R.K. Tyagi, Advocate, Janeshwar and Dharampal recorded by the police officials in the complaint titled as Ram Chander Vs. Ram Dhari etc. bearing case No. RBT-395/239-13/03.09.2015 pending in the Court of Ms. Deepti SDJM, Bahadurgarh
- (ii) Certified copy of letter no.Mis/90/302/2018 dated 11.12.2018 issued by Bar Council of Delhi received by the police in enquiry.
- (iii) Certified copy of order dated 31.10.2019 passed by the Hon'ble Court of Ms. Deepti, SDJM, Bahadurgarh in criminal complaint Ram Chander Vs. Ramdhari etc.

Vide order dated 24.02.2020 the plaintiff-petitioner was permitted to lead additional evidence by way of documents mentioned at (ii) and (iii), however, the prayer qua (i) i.e. certified copies of the statements of Ramchander, Narender Deshwal, Bijender, Satbir, Ramdhari, Dhajja Ram, Baljit Singh, R.K. Tyagi, Advocate, Janeshwar and Dharampal recorded by the police officials in the complaint titled as Ram Chander Vs. Ramdhari etc. bearing case No.RBT-395/239-13/03.09.2015 pending in the Court of

Ms. Deepti SDJM, Bahadurgarh, was disallowed. Hence, the present revision petition.

Learned counsel for the plaintiff-petitioner would contend that all the documents form part of the judicial record of the case pending in the Court of Sub Divisional Judicial Magistrate, Bahadurgarh and the plaintiff-petitioner only seeks permission to produce the certified copies of the said statements. It is further the contention that no oral evidence is required to be led in this regard. Learned counsel has further relied upon the judgment of this Court in the case of **Pyare Lal Vs. Meher Singh & Ors. [2010 (51) RCR (Civil) 108]** to contend that if a party obtains certified copy of the documents from a Court file, the same is to be treated as a public document.

Per contra, learned counsel for the defendant-respondent Nos.1 and 2 states that the application does not say as to when the said documents came to the knowledge of the plaintiff-petitioner as also all the statements recorded before the Police could not form part of the judicial record.

Heard.

In the present case certified copies of the statements mentioned at Serial No.(i) in the application form part of the judicial record in case bearing No.RBT-395/239 dated 13.09.2015 pending in the Court of Sub Divisional Judicial Magistrate, Bahadurgarh. The plaintiff-petitioner only seeks permission to produce the certified copies of the same from the judicial record.

The objection of the learned counsel for the defendant-respondent Nos.1 and 2 that the documents do not form part of the judicial record cannot be accepted in view of the fact that the plaintiff-petitioner is

wanting to produce certified copies, which have been taken from the Court concerned. Qua the admissibility or the evidential value of the documents, the same is a question which would be gone into by the Trial Court at the time of arguments. The Supreme Court in the case of **Bipin Shantilal Panchal Vs. State of Gujarat, [(2001) 3 SCC(1)]** held as under :

“13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the

course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on

account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.”

In view of the above, the present revision petition is allowed.

The certified copies of the documents at Serial No.(i), as detailed above, are also allowed to be produced by the plaintiff-petitioner as additional evidence. However, the relevancy and evidentiary value of the said documents shall be gone into by the Trial Court at the time of final arguments. Pending applications, if any, also stand disposed off.

March 29, 2023
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(ALKA SARIN)
JUDGE

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