

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

CR-1683-2023(O&M)

Date of decision:-20.3.2023

Viveshwar Kumar @ Vishyeshwar Kumar

...Petitioner

Versus

Shiv Kumar and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.S. Adlakha, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 24.2.2023 passed by Additional Civil Judge (Sr.Divn.), Yamuna Nagar at Jagadhri, vide which an application filed by the revision petitioner, who is plaintiff before the trial Court for permission to adduce additional evidence was dismissed.

2. Briefly stated, facts of the case are that plaintiff Viveshwar Kumar @ Vishyeshwar Kumar had brought a suit against defendants Shiv Kumar and Vivek Garg, seeking possession by way of specific performance of agreement to sell dated 5.1.2015 with regard to the suit property in the form of a double storied house constructed on plot measuring 92 square yards at Mauja Garhi Mundo known as Sawanpuri, Jagadhri, Tehsil Jagadhir, District Yamuna Nagar, fully detailed in the head-note of the plaint, besides craving for grant of permanent injunction restraining the defendants from alienating that property to any person etc.;

in addition to seeking a declaration that sale deed No.3049 dated 19.6.2015 executed by defendant No.1 in favour of defendant No.2 is illegal, null and void ineffective qua rights of the plaintiff.

3. On getting notice, the defendants appeared and filed written statements contesting the suit. Issues on merits were framed and trial in the case proceeded.

4. During the pendency of the suit, the plaintiff filed an application for additional evidence contending that during the preparation of the case, it came to his notice that inadvertently some important documents could not be placed on record and therefore, he wants to produce the following documents in evidence:

- i) Certified copy of order dated 12.06.2015 in case titled as Vishveshwar Kumar vs. Shiv Kumar bearing case No.CS/937/2015 passed by the Court of Ms. Archana, Civil Judge (Jr.Divn.), Jagadhri.
- ii) Certified copy of plaint of case No.311 of 2015, titled as Shiv Kumar vs. Smt. Sonia & others.
- iii) Certified copy of written statement of case No.311 of 2015, titled as Shiv Kumar vs. Smt. Sonia & others.
- iv) Certified copy of order dated 02.05.2016 passed in case No.311 of 2015, titled as Shiv Kumar vs. Smt. Sonia & others, whereby issues were framed in the said case.
- v) Certified copy of order dated 13.12.2016, passed in case No.311 of 2015, titled as Shiv Kumar vs. Smt. Sonia & others.

According to the plaintiff these documents are per se

admissible in evidence not requiring any formal proof being certified copies.

5. The application was opposed by defendant No.2 raising various legal objections, on merits contending that plaintiff had already closed evidence by examining his witnesses and tendering documents; when the case was fixed for evidence of defendant and two witnesses had been examined, then the application filed under Order 6 Rule 17 CPC, which was allowed and defendant No.2 was impleaded as a party, who had appeared and on getting notice filed written statement contesting the suit; the case was again fixed for evidence of plaintiff for 3.5.2021 and several opportunities were granted to him for leading evidence and thereafter plaintiff had moved an application for additional evidence; subsequently he withdrew the same and when the case was fixed for arguments, he had come up with application for additional evidence to fill up the lacunae in his case and to prolong the matter. The documents now sought to be produced in evidence were very much within the knowledge of the plaintiff. Such defendant prayed for dismissal of the application.

6. After hearing learned counsel for the parties, the trial Court vide the impugned order dated 24.2.2023 had dismissed the application mainly for the following reasons:

- (i) that the provision relating to leading of additional evidence has been deleted from Civil Procedure Code by way of amendment of 2002;
- (ii) that if the application is considered under Section 151 CPC, which deals with inherent powers of the Court then the Court is to see the

ends of justice are to be met and abuse of process of law is avoided to prevent the miscarriage of justice, however in this case the application in question did not fall within purview of Section 151 CPC; and

(iii)that the documents are not something new, which were not within the notice of the plaintiff, in that way the plaintiff has not exercised due diligence; furthermore, the plaintiff has not specified how the documents sought to be produced by way of additional evidence are relevant.

7. Such order left the plaintiff aggrieved and he has approached this Court by way of filing the present revision petition.

8. I have heard learned counsel for the petitioner besides going through the record and I find that there is absolutely no merit in the revision petition.

9. Learned counsel for the revision petitioner has referred to judgments i.e. *Hans Raj Versus Surinder Kaur and others, 2010(44) RCR(Civil) 782, Sanjay Kumar Singh Versus State of Jharkhand, 2022(2) RCR(Civil)451* and *Manmohan Singh Versus Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur and others, 2015(5) RCR(Civil)661*.

However, those judgments are not applicable to the present case due to different facts and circumstances and the context in which such observations had been made.

10. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional

jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

20.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No