

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1419-2022
DECIDED ON: 28.09.2023

RAJNISH

.....PETITIONER

VERSUS

SUMAN

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Ashwani Gaur, Advocate
for the petitioner.

Mr. Gaurav Tyagi, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition assails the order dated 24.03.2022 (Annexure P-7) passed by the Additional District Judge, Faridabad vide which the application filed by the respondent-defendant under Order 41 Rule 27 CPC for leading additional evidence was allowed.

2. The facts, as emanating from the revision petition, are that the petitioner-plaintiff filed a suit for declaration that the mutation No.2176/2250 dated 06.07.2016 was null and void and was not binding upon the rights of the parties. A decree of permanent injunction restraining the respondent-defendant from alienating the suit property or changing its nature and creating any third party rights etc. was also sought. The case set up by the petitioner-plaintiff was that he was the owner in possession of different parcels of land to the extent of his share (fully described in the plaint) situated in Village Karnera, Tehsil Ballabgarh, District Faridabad. It was averred that the father of the petitioner-plaintiff had executed a Will dated 17.11.2015 vide which he had bequeathed the suit property in favour of the petitioner-plaintiff. As per the petitioner-plaintiff, he had come into possession of the suit land during the lifetime of his father. The suit land was said to be the self acquired property of the father of the petitioner-

plaintiff. On 01.08.2017, the petitioner-plaintiff came to know that the respondent-defendant, in collusion with the revenue authorities, had got mutation of the suit land executed in her favour to the extent of half share. She had also threatened the petitioner-plaintiff that she would alienate the land. Under the circumstances, the suit was filed.

3. The suit was resisted by the respondent-defendant. The basic stand taken was that no Will had been executed by the father of the parties and that the same was a forged and fabricated document. It was averred that the mutation had rightly been sanctioned.

4. The suit was decreed by the Court of the Civil Judge (Junior Division), Faridabad vide judgment and decree dated 27.11.2018, leading to the filing of an appeal by the respondent-defendant.

5. During the pendency of the appeal, an application was moved by the respondent-defendant under Order 41 Rule 27 CPC for leading additional evidence. It was averred in the application that the respondent-defendant had come to know that the petitioner-plaintiff had himself submitted an affidavit to the revenue authorities on 29.04.2016 for sanctioning of the mutation which was subsequently challenged by the petitioner-plaintiff. The stand taken in the application was that once the petitioner-plaintiff had himself given an affidavit for sanctioning of the mutation, he would not be entitled to challenge the same.

6. The application was opposed by the petitioner-plaintiff and the averments made therein were denied.

7. By way of the impugned order dated 24.03.2022, the Court of Additional District Judge, Faridabad allowed the application leading to the filing of the present revision petition.

8. I have heard learned counsel for the parties and have also perused the paper book.

9. Learned counsel for the petitioner-plaintiff submitted that the First Appellate Court erred in allowing the application at the first appellate stage and grave injustice had been caused to the petitioner-plaintiff. It was submitted that the respondent-defendant could not be permitted to fill up the lacunae since the trial Court had already given a decision against the respondent-defendant and the respondent-defendant was simply trying to change her stand.

9.1 It was submitted that the mutation was sanctioned in the year 2016 and the suit was filed in the year 2017. Even the written statement was filed by the respondent-defendant in the year 2017 and that it was for the respondent-defendant to check the relevant record before filing her written statement. Learned counsel contended that the respondent-defendant had not been able to show that she had been diligent enough in defending her case and producing the relevant evidence at the relevant time.

9.2 Learned counsel submitted that by allowing the application, virtually a written statement was permitted to be amended at the stage of the appeal which would not be permissible. In support of his contentions, learned counsel placed reliance upon the judgments passed by the Hon'ble Apex Court in ***Civil Appeals Nos.543 and 544 of 1985 and No.1084 of 1986*** titled as '***Syed and Company and Others Vs. State of Jammu and Kashmir and Others***', 1995 (Sup4) SCC 422 and ***Civil Appeal Nos.7898-7900 of 2002*** titled as '***State of Gujarat and Another Vs. Mahendra-kumar Parshottambhai Desai (D) by LRs***', 2006 AIR (Supreme Court) 1864.

10. On the other hand, learned counsel for the respondent-defendant submitted that there is no illegality or infirmity in the impugned order. It was submitted that the mutation had come to the notice of the respondent-defendant at a subsequent stage and, therefore, the application for additional evidence was moved. It was submitted that the evidence sought to be produced would be

essential for the just decision of the case.

11. I have considered the submissions made by learned counsel for the parties.

12. The facts are not in dispute. The dispute is between a brother and a sister with regard to the land which belonged to their father. The petitioner-plaintiff claims that the entire land had been bequeathed to him by way of a Will dated 17.11.2015 and that the mutation No.2176/2250 dated 06.07.2016 had been got sanctioned by the respondent-defendant in collusion with the revenue authorities.

12.1 On the contrary, the stand of the respondent-defendant from the very beginning was that the Will is a forged and fabricated document and that the mutation had validly been sanctioned.

12.2 The trial Court decreed the suit while upholding the Will and consequently finding that the mutation could not survive.

13. During the pendency of the appeal filed by the respondent-defendant, she is stated to have acquired the knowledge of a very important fact that her brother i.e the petitioner-plaintiff had filed an affidavit before the revenue authorities in which it had been requested that mutation be sanctioned. She sought to produce this additional evidence at the appellate stage. In the considered opinion of this Court, this evidence would be very important for the just decision of the case. No doubt, the Will has been upheld by the trial Court. However, the appeal against the decision of the trial Court is pending. The dispute, of course, shall be decided on its own merits. However, if the petitioner-plaintiff had himself given an affidavit that the mutation be sanctioned, the final result of the litigation may change. In the considered opinion of this Court, the First Appellate Court did not commit any illegality in allowing the application. At the cost of repetition, it needs to be mentioned that the evidence sought to be

led by the respondent-defendant at the appellate stage would be essential for the just decision of the case.

14. The argument that permitting the respondent-defendant to lead additional evidence would amount to an amendment in the written statement is also devoid of merit because the fact came to the notice of the respondent-defendant at a later stage and, therefore, she could always have raised the plea. In so far as the written statement is concerned, the stand from the very beginning was that the mutation had validly been sanctioned. Under the circumstances, the plea of the respondent-defendant would not change and no amendment of the written statement would be required.

15. I have perused the judgments relied upon by learned counsel for the petitioner-plaintiff. In the case of *Syed and Company and Others* (Supra), it was held by the Hon'ble Apex Court that evidence cannot be let in without pleadings. In that case, a suit for recovery had been filed by the State of Jammu and Kashmir against Syed and Company and Others. The suit was dismissed. First appeal was preferred. During the pendency of the appeal, an application under Order 41 Rule 27 was preferred. The same was rejected by the High Court on two grounds, one that it was hopelessly belated and second that the party could not be allowed to lead evidence on a plea not taken by it in the pleadings. The Hon'ble Apex Court upheld the order of the High Court. However, this judgment would not come to the aid to the petitioner-plaintiff as in that case, there was no pleading with regard to which evidence was sought to be led. In the present case, as is already been observed, the stand of the respondent-defendant from the very beginning was that the Will is a forged and fabricated document and that the mutation had validly been sanctioned. The leading of additional evidence would be to prove the averment that the mutation had been validly sanctioned and it cannot be said that the additional evidence would amount to evidence without

there being pleadings in that regard. In the case of *State of Gujarat and Another* (Supra), applications for additional evidence had been dismissed by the High Court of Gujarat while dismissing the main appeals. In this case, while interpreting the provisions of Order 41 Rule 27 CPC, the Hon'ble Apex Court held that the provisions of Order 41 Rule 27 did not entitle the Appellate Court to let in fresh evidence at the appellate stage and that it was for the applicant to show that despite efforts diligently made by the appellant, such evidence was not within its knowledge. This judgment would also not help the petitioner-plaintiff, since it is the specific case of the respondent-defendant that she had acquired knowledge of the affidavit submitted by the petitioner-plaintiff just prior to the filing of the application for additional evidence. Under the circumstances, it cannot be said that the respondent-defendant had not acted with due diligence. Even otherwise, as has been observed in the preceding paragraphs, the evidence sought to be produced at the appellate stage would be essential for the just decision of the case and under the circumstances, the First Appellate Court rightly allowed the application for additional evidence.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

28.09.2023
Prince Chawla

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