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

CR-2462-2021 (O&M)
Date of Decision:- 22.11.2023

BANSHI LAL

...Petitioner

Vs.

USHA AND OTHERS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Vishal Nehra, Advocate for the petitioner.
Mr. A.K. Goyal, Advocate for the respondents.

AMARJOT BHATTI, J. (Oral)

1. The petitioner Banshi Lal has filed civil revision petition under Article 227 of the Constitution of India for setting aside the order dated 14.10.2021, Annexure P-4, passed by Additional District Judge, Sonapat whereby application under Order 41 Rule 27 CPC seeking permission to lead additional evidence has been wrongly allowed.

2. Learned counsel for the petitioner/defendant argued that the plaintiffs i.e. respondent Nos.1 to 4 filed suit for declaration with consequential relief of permanent injunction alleging that their predecessor late Khushi Ram inherited ancestral property in village Nangloi Jat, District Mehrauli from his forefather and after selling of ancestral land late Khushi Ram purchased land in village Gohana vide different sale deeds.

Therefore, it was in the hands of late Khushi Ram as their ancestral property. It is further claimed that late Khushi Ram could not have executed Will regarding the land in favour of Mishro Devi alias Mishri Devi and she could not suffer a decree in favour of the defendants. In this way, the plaintiffs claimed 1/6th share in the suit land. It is pointed out that the suit filed by the plaintiffs was ultimately dismissed vide judgment and decree dated 30.10.2014 (Annexure P-1) and feeling aggrieved of this judgment and decree, appeal was preferred before the First Appellate Court in which application under Order 41 Rule 27 CPC was filed which is Annexure P-2. The said application was contested by the contesting respondents/defendants by filing reply which is Annexure P-3. However, the said application has been allowed by passing impugned order dated 14.10.2021 which is Annexure P-4. It is argued that the application has been filed at a belated stage. The respondent Nos.1 to 4/plaintiffs were well aware of all the documents which were required to be produced. Even then the said record was not proved on the file when the case was fixed for their evidence. The application for additional evidence has been filed to fill up the lacuna in the case. During the pendency of the case before the trial Court application was filed for leading additional evidence which is Annexure P-5 and that application was also contested by filing reply, Annexure P-6 and the same was dismissed by the trial Court vide order dated 12.02.2014 (Annexure P-7). The said order was never challenged by the plaintiffs at that relevant time. The application filed before the First Appellate Court seeking permission to lead additional evidence is misuse of the process of law. Without considering these facts, the learned First Appellate Court has wrongly allowed the application for

additional evidence by passing impugned order dated 14.10.2021 (Annexure P-4). It is prayed that the aforesaid order may kindly be set aside by accepting the present Civil Revision.

3. On the other hand, learned counsel for the contesting respondents pointed out that the plaintiffs have based their claim by alleging that the property in the hands of Khushi Ram was their ancestral property regarding which he could not have executed Will in favour of Mishro Devi @ Mishri Devi nor Mishro Devi @ Mishri Devi could have given away the said property by suffering decree which are challenged in the present suit. The case of the respondent Nos.1 to 4/plaintiffs is based on the revenue record which cannot be manipulated. Therefore, considering the nature of record required to be produced on the file by way of additional evidence, the application was rightly allowed. The petitioner/defendant is not going to suffer any prejudice in case the said revenue record is taken into account while disposal of the appeal pending before the First Appellate Court. Therefore, the Civil Revision preferred by the petitioner/defendant may kindly be set aside.

4. I have considered the arguments and have gone through the record carefully. From the contents of judgment dated 30.10.2014 (Annexure P-1) challenged before the First Appellate Court, it is clear that the plaintiff No.1 is the widow and plaintiffs No.2 to 4 are the children of late Ishwar Singh son of Khushi Ram who have claimed 1/6th share in the property left behind by Khushi Ram alleging that it was ancestral property in the hands of Khushi Ram and further challenged the mutation on the basis of Will dated 24.02.1992 in favour of Mishro Devi @ Mishri Devi and further challenged the judgment and decree suffered by Mishro Devi

@ Mishri Devi as detailed in the judgment. The learned trial Court dismissed the suit filed by the plaintiff as a result of which appeal was filed which is pending before the First Appellate Court. In the said appeal the respondent Nos.1 to 4/plaintiffs filed application under Order 41 Rule 27 CPC seeking permission to place on record copy of jamabandi for the year 1887-1888, mutation No.65, jamabandi for the year 1913-1914 till 1945-1946 and 1987-88 and mutation No.1034 in Urdu language along with its Hindi translation by way of additional evidence. The said application seeking permission to lead additional evidence has been allowed by the First Appellate Court by passing impugned order dated 14.10.2021 (Annexure P-4). The nature of controversy involved in this case is clear from the contents of the judgment passed by the trial Court which is Annexure P-1. The respondent Nos.1 to 4/plaintiffs could have led their evidence in affirmative when the case was fixed for their own evidence. However, at that relevant time, the aforesaid revenue record was not relied upon and now the respondent Nos.1 to 4/plaintiffs want to produce the same by way of additional evidence. Since the record required to be proved on file is the revenue record and the same cannot be tampered with. In-fact it is an old record, therefore, for the proper and final adjudication of the matter in controversy, the Court cannot afford to ignore the previous revenue record consisting of jamabandi and the mutation which was sanctioned from time to time. The application seeking permission to lead additional evidence cannot be declined on the sole ground as it has been filed at a belated stage. The main endeavour of the Court is to dispose of the case on merits by relying upon the evidence led by both the parties. Therefore, considering these facts, I do not find any

illegality or irregularity committed by the First Appellate Court by allowing the application for additional evidence by passing impugned order dated 14.10.2021 and the same is accordingly upheld.

5. The Civil Revision preferred by the petitioner/defendant Banshi Lal is, accordingly, declined.

Pending application (s), if any, also stands disposed of.

22.11.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No