

CR-5010 of 2023

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

CR-5010 of 2023

Date of decision: 31.08.2023

Ankit Kumar

.....Petitioner

Versus

Subhash Chander @ Subhash Chand and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Binderjit Singh, Advocate,
for the petitioner.

NAMIT KUMAR, J.

1. Instant revision petition has been preferred by defendant No.1-petitioner under Article 227 of the Constitution of India challenging the order dated 04.08.2023 passed by the Court of learned Civil Judge (Junior Division), Bathinda, in civil suit No.213 of 13.08.2012/3559-2013 titled “Subhash Cander @ Subhash Chand v. Ankit Kumar and others”, whereby application for allowing him to produce and prove copy of plaint dated 09.06.2012 filed by plaintiff-respondent, has been dismissed.

2. Brief facts relevant for the disposal of the present revision petition are that plaintiff-respondent No.1 filed a suit for declaration to the effect that inheritance to the estate of late Sh. Ved Parkash son of Sh. Babu Ram is governed solely by ‘will’ dated 30.12.2011 executed by Sh. Ved Parkash owner during his lifetime in favour of his three

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sons i.e. plaintiff and defendants No.2 and 3. Plaintiff-respondent No.1 claimed that by virtue of said 'will', he had become exclusive owner in possession of the following properties after the death of Sh. Ved Parkash: -

1. ½ share of property measuring 12 marlas comprising in khewat/khatoni No.645/2016, bearing khasra Nos.1087/3/8/3/4/8/1 (0-12) (*gair mumkin*) situated at Nai Dabwali, Tehsil Dabwali, District Sirsa.
2. Property bearing old M.C. No.124, New No.435, measuring about 10'x115' situated in ward No.2, Old Grain Market, Mandi Dabwali, Tehsil Dabwali, District Sirsa.
3. Shop No.154 measuring 20'x125', B-Block, New Grain Market, Mandi Dabwali, District Sirsa.
4. ½ share of house-cum-shop bearing M.C. No.57, measuring about 15'x100' situated in ward No.3, Sangat Mandi, Tehsil and District Bathinda.
5. Portion measuring 15 ¼ feet x 15 feet of house No.97, situated in ward No.3, Sangat Mandi, District Bathinda.

Further relief of permanent injunction has also been sought for restraining defendants No.1 to 6 from interfering in peaceful possession of the plaintiff over abovesaid properties; restraining defendants No.1 to 6 from taking illegal and forcible possession of all or any of the aforementioned suit properties and also for restraining them from alienating in any form or manner abovesaid suit properties in favour of any person in derogation of terms of 'will' dated 30.12.2011 executed by Sh. Ved Parkash, deceased. Defendants, including defendant No.1-petitioner, filed their written statements to the suit. On 13.02.2023

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defendant No.1-petitioner filed an application for allowing him to produce and prove certified copy of plaint dated 09.06.2012 filed by respondent No.1-plaintiff, which was dismissed as withdrawn with liberty to file fresh one on the same cause of action. Respondent No.1-plaintiff filed reply to the said application. The said application has been dismissed by the Court of learned Civil Judge (Junior Division), Bathinda, vide impugned order dated 04.08.2023.

3. Learned counsel for the petitioner contended that the impugned order passed by the trial Court is erroneous. He further contended that the trial Court failed to appreciate that the proposed additional evidence, which defendant No.1-petitioner wants to produce and prove is certified copy of plaint dated 09.06.2012, which was earlier filed by plaintiff-respondent No.1 and the same finds mention in para 13 of the present plaint. He further contended that the trial Court also failed to appreciate that plaintiff was allowed to withdraw the suit with liberty to file fresh one on the same cause of action, however, he acted beyond the liberty granted to him. He further submits that plaintiff-respondent No.1 has tried to bring sea changes in subsequent plaint, which is not permissible in law. He is not at liberty to bring new properties and new cause of action which were not pleaded in the earlier suit. He further submitted that while dismissing his application, the trial Court has observed that the case is at the fag end of the trial and fixed for rebuttal and arguments. He further submitted that due to inadvertence or oversight of the earlier counsel, he could not produce the documents at the time of cross-examination of plaintiff-respondent

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No.1 and he has changed the counsel now who has filed the present application for additional evidence. He further submitted that contradictory facts have been given in both plaints. He further contended that the impugned order suffers from material irregularities, therefore, the same is liable to be set aside.

4. I have heard learned counsel for the petitioner and perused the record.

5. Concededly, petitioner wants to place on record the plaint dated 09.06.2012 filed by plaintiff-respondent No.1 in earlier suit which was dismissed as withdrawn, by way of additional evidence. The plaint sought to be proved was sought by defendant No.1-petitioner during the cross-examination of PW-3 Subhash Chander and PW3 Subhash Chander had brought the same on the next date of hearing, however, the same was not placed on record. Perusal of record shows that evidence of the defendants was closed by order dated 08.03.2017 by the trial Court and they failed to place on record the said plaint during their evidence. It is relevant to note that earlier an application under Order 12 Rule 3-A CPC was filed before the trial Court which was allowed vide order dated 01.09.2017 and against that order CR-8170 of 2017 was filed by plaintiff-respondent No.1 which was allowed by this Court vide order dated 06.01.2023. Despite availing adequate opportunities i.e. during the cross examination of the plaintiff and even at the time of his own evidence, defendant No.1-petitioner failed to prove the plaint of earlier suit filed by plaintiff. Hence, this Court is of

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the opinion the said application was filed by the plaintiff only to delay the proceedings of the case.

6. In *Salem Advocate Bar Association, Tamil Nadu v. Union of India, 2005(3) R.C.R.(Civil) 530* the Hon'ble Supreme Court held that on a party satisfying the Court that after exercise of due diligence that evidence was not within its knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just, however, in the present case, in the application, there is no such averment that after exercise of due diligence, the said plaint could not be produced earlier.

7. In view of the above, this Court does not find any illegality or perversity in the impugned order, which may call for any interference by this Court by exercising its revisional jurisdiction.

8. Dismissed.

31.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No