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

CR-4611-2022 (O&M)

Date of Decision: 08.05.2023

Noora @ Nura and another

....Petitioners

Versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Adarsh Jain, Advocate
for the petitioners.

None for respondents No.1 & 2, despite service.

Mr. Vinay Kumar Pandey, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 23.09.2022 passed by Ld. Additional Civil Judge (Sr. Divn.), Nuh, whereby application filed by plaintiff/petitioners seeking permission to examine the Urdu language expert by way of additional evidence, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. In the suit filed vide plaint dated 07.09.2016 (Annexure P-1), a decree for declaration is sought that plaintiffs are owners in possession of the suit property and rapat & mutation entries in the year 2015-16 recorded, suggesting redemption, are null and void and not binding on plaintiffs and otherwise, they are entitled to redemption of mortgage, and for correction of revenue entries in their favour.

2.2. Upon notice, respondents filed written statement and after framing of issues, plaintiff/petitioners led documentary evidence i.e., from Ex.P-1 to Ex.P-23.

However, some part of the revenue record was not part of those exhibits.

Consequently, an application was filed seeking permission to lead additional evidence by way of revenue records, including Jamabandis, Mutations and consolidation record. Reply was filed by defendants taking a plea that at the stage of rebuttal and arguments, the documents could not be produced and it would amount to filling up lacunae in the case.

2.3. Ld. Court below allowed the said application observing revenue record i.e. Jamabandis, Mutations and documents of consolidation sought to be produced by additional evidence, would come from the safe custody of Revenue Officer and could not be tampered and such documents would ensure substantial justice.

2.4. By way of additional evidence, the plaintiffs tendered documents as Ex.P-24 to Ex.46. Some of the revenue records maintained in Urdu language were got translated to Hindi and produced. Regarding authenticity of documents, an application was filed along with affidavit of Translator authenticating the translated documents and a prayer was also made to examine the Translator for proving the authenticity of translated documents. Defendant/respondent No.3 filed reply objecting to the translator being examined to prove that translation. Ultimately, the application for examination of Urdu Translator was dismissed vide order impugned herein.

3. Learned counsel for petitioners would argue that dismissal of application for examination of Urdu Translator would amount to withdrawing of earlier order dated 19.07.2022 (Annexure P-4), whereby application for leading additional evidence had been allowed. He would further urge that by way of said application, the only endeavour of plaintiff/petitioners was to prove the authenticity of translation.

4. On the other hand, learned counsel for respondent No.3 vehemently opposes the revision petition and submits that in case prayer made by applicant/petitioner is granted, it would amount to re-opening of trial of the case, which is impermissible, at the stage of final arguments.

5. Heard.

6. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading additional evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce additional evidence. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to lead additional evidence. Trial in the suit may lead to unjust consequences in the absence of an opportunity to petitioner to adduce additional evidence, particularly when the prayer of petitioners to tender the documents has been allowed by learned Court below.

7. In view of the aforesaid scenario, revision stands allowed. Impugned order is set aside. Ld. Court below to give one effective opportunity to petitioners to examine Urdu Translator to prove the correctness of Hindi translation of documents which are in Urdu. Needless to say that Ld. Court below per his/her own discretion shall grant further opportunities depending upon exigency of work before it.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 08, 2023
ashish

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No