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2023:PHHC:166214

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

Civil Revision No.6372 of 2019 (O&M)

Date of decision: 20.11.2023

Mukesh and another

.... Petitioners

Versus

Subhash

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Vikram Singh, Advocate, for the petitioners.

Mr. B.S. Bairagi, Advocate, for the respondent.

GURBIR SINGH, J.

CM-9500-CII-2023

Prayer in this application filed under Section 151 CPC is to place on record copies of statements of Subhash, Ram Rattan, Gulab Singh and Naresh Kumar as Annexures P-6 to P-9.

For the reasons mentioned in the application, same is allowed and the documents Annexures P-6 to P-9 are taken on record subject to all just exceptions.

CR-6372-2019

1. This revision petition is moved by the defendants/counter-claimants for setting aside the order dated 21.09.2019 (Annexure P-5) whereby their application for leading additional evidence has been dismissed.

2. The brief facts as culled out from the petition are that the respondent-plaintiff (hereinafter called, “plaintiff”) filed a suit for declaration with consequential relief of permanent injunction that he purchased the suit property for consideration through sale deed dated 11.05.2012. Plaintiff is in cultivating possession of suit property since the day of purchase. Defendant/petitioner No.1-Mukesh was having knowledge that he had sold the suit property to the plaintiff, even then he executed a relinquishment deed dated 17.07.2012 in favour of his son i.e. defendant/petitioner No.2 and also got the mutation sanctioned. Said relinquishment deed and mutation are illegal, null and void.

2.1 The defendants contested the suit, filed written statement, on the ground that they are in actual possession of the suit property along with other co-sharers. Defendant No.1 did not sell the suit property. Sale deed dated 11.05.2012 is the result of fraud. Relinquishment deed executed by defendant No.1 in favour of defendant No.2 is legal and authentic document.

2.2 Plaintiff had also got registered an FIR against defendant No.1-Mukesh. He moved an application under Section 151 CPC for leading additional evidence on the ground that he wants to produce certified copies of statements of Naresh Kumar, Petition Writer; Subhash son of Mange Ram; SI Ram Rattan, Gulab Singh, Registry Clerk, which were recorded in the criminal case titled as *State Versus Mukesh*. Certified copies of statements of said persons are *per se* admissible in evidence.

2.3 The plaintiff contested the said application on the ground the defendant availed eight opportunities to lead evidence, but failed to produce

the same. The case *State Versus Mukesh* was decided on technicalities. In case the application is allowed, the case will be reopened.

2.4 Vide order dated 21.09.2019 (Annexures P-5), the learned trial Court dismissed the said application. It is against said order, present revision petition has been filed.

3. Learned counsel for the petitioners-defendants has argued that in the FIR case, which was got registered by the plaintiff against defendant No.1, the witnesses admitted that the plaintiff played fraud with defendant No.1. The petitioners-defendants want to produce the statements of witnesses recorded in case *State Versus Mukesh* as additional evidence. It is submitted that earlier these statements could not be produced as the same came in their knowledge afterwards. Reliance is placed on ***Bipin Shantilal Panchal Versus State of Gujarat, Criminal Miscellaneous Petition No.862 of 2001 in Special Leave Petition (Criminal) No.223 of 2000, decided on 22.02.2001***, an authority of Hon'ble Supreme Court; ***Anil Kumar Deswal Versus Rishi Verma and another, Civil Revision No.5810 of 2015, decided on 15.11.2017***, an authority of this Court.

4. Learned counsel for the respondent-plaintiff has submitted that a fact is required to be proved independently in a civil case. Any statement recorded in a criminal case cannot be read in a civil case. Said statements are their previous statements and can only be used for corroborating the witness or to contradict the witness. Said statements are not admissible and cannot be allowed to be tendered.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. The petitioner-defendant No.1 has moved the application on the ground that the statements sought to be proved by additional evidence came in his knowledge afterwards. In a criminal case, evidence is recorded in the presence of the accused and petitioner No.1 was the accused in the said case. So, application was apparently filed on the wrong averments. From the perusal of the copies of the statements, it transpires that those were recorded in August, 2014, so, same were already in existence at the time of leading the evidence by the petitioner-defendant, but he failed to bring the same on record. A statement made by a witness in a criminal case is only his previous statement and same can only be used to contradict or corroborate the witness. The statement recorded in a criminal trial cannot be tendered in a civil case. The statements as such are admissible. A civil court cannot placed reliance of such tendered statements for deciding the case.

7. In case ***Bipin Shantilal Panchal (supra)***, delay occurred in the trial Court over the admissibility of the documents and admissibility of evidence, it is held by the Hon'ble Supreme Court that whenever an objection is raised during evidence regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case subject to such objections to be decided at the last stage in the final arguments. If at the final stage, it is found that the objection is sustainable, the court can keep such evidence excluded from consideration, except objection regarding deficiency

of stamp duty. In case *Anil Kumar Deswal (supra)*, the question was for proving the entry in the register by way of secondary evidence. Said authorities are not of any help in the instant case.

8. The evidence, which is not admissible, cannot be allowed to be led by way of additional evidence. No ground for interference in the lawful order passed by the trial Court is made out. Present revision petition is without any merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

November 20, 2023
sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No