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

CR-6881-2019 (O&M)

Date of Decision: 18.04.2023

Kewal Singh (since deceased) Through LRs.

....Petitioner(s)

Versus

Mohinder Singh (since deceased) Through LRs and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Umesh Kumar, Advocate
for the petitioner(s).

Mr. Sahil Soi, Advocate
for respondent No.1(ii).

Ms. Sushma Sharma, Advocate for
Mr. Ramesh Chand Sharma, Advocate
for respondents No.5 and 6.

None for respondent No. 9, despite service.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 01.10.2019(Annexure P-7) passed by Ld. Civil Judge (Jr. Divn.), Nakodar dismissing application for leading additional evidence moved by petitioner/plaintiff.

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

2.1. Original petitioner (since deceased and now represented by legal representatives) filed a suit for declaration to the effect that petitioner/plaintiff along with defendants No.2 to 4 are joint owners in possession of the suit property and further for declaration that sale deed dated 24.07.2009 allegedly executed by respondent No.1/defendant No.1 in favour of Seema Rani-defendant No.5 is null

and void and not binding upon the rights of petitioner/plaintiff and respondents No.2 to 4/defendants with consequential relief of permanent injunction restraining respondents/defendants No.1, 5 & 6 from interfering into the peaceful possession of plaintiff and from alienating any portion of the suit property. Though the evidence of petitioner/plaintiff(s) was concluded but some material documents, which are very necessary, could not be tendered despite their due diligence as the same was not traceable. Documents which petitioner(s) want to tender before Ld. Trial Court are family partition effected between the predecessor of petitioner and respondent No.1 and mutation No.608. The claim of petitioner(s) before Ld. Trial Court is that disputed land has already been partitioned between their predecessors and, therefore, disputed land came to the share of petitioner/plaintiff(s) and defendants No.2 to 4 and they are owners in possession of the disputed property and defendant No.1 does not have any right and title over the property and he has no right to sell any part of the property.

2.2. Earlier the documents were not traceable and when the same were found, evidence of defendants was going on and petitioner(s) moved an application for adducing the same in rebuttal evidence but the application filed by petitioner(s) was dismissed. Thereafter, he filed revision bearing CR No.2760 of 2019 before this Court and the same was dismissed as withdrawn with liberty to file application for additional evidence vide order dated 30.04.2019 (Annexure P-3).

2.3. Application (Annexure P-4) was moved for additional evidence to produce certified copy of mutation No.608 of transfer of property from Didar Singh to Piara Singh i.e., father of original petitioner and document of family settlement along with its translation in Punjabi. Defendants No.1, 5 & 6 filed their replies to the application (Annexures P-5 and Annexure P-6). However, Ld. Trial

Court dismissed the application vide impugned order dated 01.10.2019 (Annexure P-7).

3. Learned counsel for petitioner(s) would argue that aforesaid documents are necessary for adjudication of the *lis* and Ld. Trial Court failed to appreciate the fact that family partition has already been admitted by DW-1.

4. Given the nature of order being passed, there is no necessity to serve unserved respondents, as no serious prejudice would be caused to them. Service upon unserved respondents is thus dispensed with.

5. Having heard the arguments of learned counsel for petitioner(s) and in order to meet the end of justice, I deem it appropriate to allow the application for adducing additional evidence to the extent that petitioner(s) are permitted to exhibit only certified copy of documents through their counsel and no further opportunity of examination/cross-examination of any witness for proving them shall be accorded for the same. Needless to say that respondents are at liberty to oppose the documents being taken on record, if so advised, in case they feel that such documents are not *per se* admissible.

6. Disposed of in above terms. Impugned order is modified accordingly.

7. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 18, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No