

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

CR 6131/2022 (O&M)

Date of decision: 07/02/2023

Ram Singh

.....**Petitioner**

Vs.

Tek Chand and others

.....**Respondents**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kunal Dawar, Advocate for the petitioner.
Mr. Sanjay Verma, Advocate for the respondents.

Nidhi Gupta, J.

Present revision petition has been filed by the petitioner/plaintiff for setting aside the order dated 15.12.2022 (Annexure P-1) passed by Civil Judge (Junior Division), Faridabad whereby the application moved by the petitioner for leading additional evidence in the shape of: a) sale deed bearing NO.11447 dated 29.9.2009, which is a registered document and therefore, per se admissible; and b) letter dated 5.12.2022 (Annexure P-7) issued by the Tehsildar (Sales) certifying ownership of father of the petitioner to the extent of 35% over the suit land, has been rejected.

Brief facts of the case are that petitioner filed a suit (Annexure P-2) for mandatory injunction directing the defendants to handover the vacant and peaceful possession of the suit property bearing old no. EP 429 (now no.180/6) situated in Jacompura, Gurgaon measuring 102 square yards. It is pleaded case of the petitioner that he became owner of the suit property on the basis of a court decree passed by Ld. Civil Judge (Junior Division), Gurugram

in civil suit no.51/2014. It was further pleaded by the petitioner that the suit property was allotted to Uday Singh, father of the petitioner by the Rehabilitation Department and all payments towards the suit property had been made.

Upon notice, respondents/defendants appeared and filed written statement (Annexure P-3). Vide order dated 11.1.2017 the following issues were framed:

- “1. Whether the plaintiff is entitled to decree for mandatory injunction, as prayed for? OPP
2. Whether the plaintiff has no cause of action/locus standi to file the present suit? OPD.
3. Whether the present suit is not maintainable in the present form? OPD.
4. Whether the suit of the plaintiff is barred by limitation? OPD.
5. Whether the plaintiff has concealed true and material fact from the court? OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct to file the present suit? OPD.
7. Relief”.

Thereafter the plaintiff's evidence was closed on 5.2.2018 and the defendants' evidence was closed on 6.9.2022. It is on 15.12.2022 that the petitioner filed the present application (Annexure P-6) for placing on record the aforementioned documents which has been dismissed by the learned Trial Court vide impugned order. Hence, the present revision petition.

Learned counsel for the petitioner refers to para 4 of the application Annexure P-6 to state that petitioner only seeks to tender the said document and does not even want to lead any evidence in regard to that. It is

submitted that the said documents which are per se admissible can be tendered at any stage and therefore, the Trial Court is in grave error in dismissing the petitioner's application for additional evidence.

In response, it is submitted by the learned counsel for the respondents that petitioner had filed the civil suit in the year 2015. Learned counsel refers to plaint at Annexure P-2 and submits that it has been stated therein by the petitioner, that Uday Singh father of the petitioner was owner of the suit property and had made payment towards the allotment of the suit property. Learned counsel then refers to Para 7 of the preliminary objections of the written statement filed by the defendants and submits that in actual fact the cost of the suit property was settled between the parties by way of family settlement/ agreement dated 31.5.1975, in pursuance to which cost of Rs.5250/- was also paid by the father of the answering respondent/defendant. It is submitted that accordingly, entire amount of the share of the house in question had been paid for by the father of the answering respondent. It is further submitted that the plaintiff's evidence was closed on 5.2.2018 and defendants' on 16.9.2022 and the application has been filed by the petitioner thereafter in October 2022. It is submitted that the petitioner earlier had also filed an application for placing on record same documents which had been dismissed by the learned trial court. It is submitted that accordingly, there is no error in the impugned order and revision petition deserves dismissal.

I have heard learned counsel for the parties and given my thoughtful considerations to their rival submissions.

A perusal of the record of the case shows that no doubt, the petitioner had earlier also filed an application (Annexure P-4) for leading additional evidence. However, by way of said application petitioner had sought

to place on record the order dated 4.8.1998 passed in Civil suit no.6454/1997. In the said earlier application Annexure P-4, there is no mention of the documents sought to be placed on record by way of present application. The documents now sought to be placed on record by way of present application are sale deed bearing Vasika no.11447 dated 29.9.2009 in which ownership of Uday Singh, father of the petitioner has been shown over the suit property. The second document is the letter dated 5.12.2022 Annexure P-7, issued by the Tehsildar (Sales) certifying part ownership of Uday Singh, father of the petitioner over the suit property.

In my view the said documents are necessary for the proper adjudication of the matter as they have a direct bearing on the issue / dispute of ownership at hand. Thus, the additional evidence sought to be brought on record is very much relevant. Further, the reason cited by the learned Trial Court in rejecting the application of the petitioner on the ground that “*plaintiff intends to adduce on sale deed of some other property and not of the suit property*” is factually incorrect. A perusal of para 2 of the plaint (Annexure P-2) shows that the suit property is described therein as “*property bearing old No. EP429 (now no. 180/6) situated in Jacompura, Gurugram measuring, 102 yd.*”²; and perusal of the certificate of ownership issued by the Naib Tehsildar (Sales) Gurugram (Annexure P-7) show that the property described therein are one and the same .

In the present facts and circumstances, reliance may also be placed upon judgment of this Court in the case of **Pawan Kumar v Raj Kumar and others, Law Finder Doc Id # 124634** wherein it has been held that the Court has inherent power to allow additional evidence in case it is necessary for just and proper adjudication of the case. Even otherwise, in the present case the evidence is per se admissible and therefore, deserves to be allowed. In another case titled **Dilbagh v Amar Singh, Law Finder Doc Id # 26436**, this

Court had permitted adducing of additional evidence even at the appellate stage.

In the present case the proceedings are still before the trial court and additional evidence can therefore, be permitted. Reliance may also be placed upon judgments rendered by this Court in the case of **Jasvir Singh Bal v Chanan Singh and others, CR 2042/2022, decided on 17.8.2022** and **Bant Singh v Sadhu Singh, CR 4624/2022, decided on 21.11.2022.**

In view of the above factual and legal position, this revision petition is allowed; impugned order dated 15.12.2022 (Annexure P-1) is set aside and the application of the petitioner/plaintiff for leading additional evidence is allowed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

07/02/2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No