

CR-8383-2018

2023:PHHC:128642

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-8383-2018

Date of Decision: 4.10.2023

Prem Singh

....Petitioner

VERSUS

Neki Ram and others

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Sachin Mittal, Advocate with
Mr. Akshat Mittal, Advocate,
for the petitioner.

Mr. Sanjiv Gupta, Advocate,
for respondents No.12 to 19.

KARAMJIT SINGH, J.

Present revision petition has been filed by petitioner-plaintiff No.1 against order dated 22.11.2018 (Annexure P-4) passed by the Court of Civil Judge, Junior Division, Karnal whereby the application filed by the petitioner for permission to lead additional evidence has been dismissed.

2. Brief facts of the case are that the plaintiffs filed suit for possession by way of specific performance of agreement to sell dated 7.11.1984 which was executed by Jaimal Singh in favour of the plaintiffs and defendant No.17 for total sale consideration of ₹ 1,27,625/-.

3. The suit was contested by defendants No.1 to 16, they being legal heirs of Jaimal Singh. Learned trial Court framed issues and thereafter, both the parties adduced evidence. When the suit was fixed for rebuttal

evidence, if any, otherwise, for final arguments, the plaintiffs filed an application for additional evidence to get compared disputed thumb impression of Jaimal Singh on agreement to sell dated 7.11.1984 with his thumb impression appearing on sale deed dated 5.6.1982 from Document and Finger Print Expert and then to examine the said expert and further to tender certified copy of judgment dated 7.2.2014 passed by this Court in RSA-2419-1984 titled Savitri and others v. Hukam Chand and others. The application was contested by the defendants who filed written reply.

4. After hearing counsel for the parties, said application for additional evidence was dismissed by the learned trial Court vide impugned order dated 22.11.2018.

5. Being aggrieved, the petitioner has filed the present revision petition.

6. I have heard the counsel for the parties.

7. Counsel for the petitioner, while assailing the impugned order, submits that Jaimal Singh executed agreement to sell dated 7.11.1984 with regard to his land with the plaintiffs; that the petitioner wants to get compare the disputed thumb impression of Jaimal Singh on agreement to sell in question with his admitted thumb impression on sale deed dated 5.6.1982 in order to prove the execution of the aforesaid agreement to sell. It is further submitted that due to oversight, the petitioner failed to examine the Hand Writing Expert at the initial stage when the petitioner was leading his evidence. Counsel for the petitioner further submits that there is no bar to lead additional evidence on behalf of the petitioner at this stage when evidence of both the parties has already been concluded. He further submits

that certified copy of judgment dated 7.2.2014 is *per se* admissible and could be easily tendered by way of additional evidence by the petitioner. Counsel for the petitioner further contends that the aforesaid additional evidence which the petitioner intends to produce is necessary for just decision of the case. So, prayer is made that the present petition be allowed and permission be given to the petitioner to lead additional evidence as prayed for.

8. Present petition is resisted by counsel for respondents No.12 to 19, who while supporting the impugned order, submits that there is no illegality or infirmity in the impugned order. It is further submitted that in the trial Court, firstly, the plaintiffs led their evidence and thereafter, the defendants were given opportunity to lead their evidence and the application for additional evidence was filed by the plaintiffs after recording of evidence of both the parties. It is further submitted that the application for additional evidence was filed at the belated stage just to prolong the proceedings in the trial. It is further submitted that the learned trial Court rightly dismissed the application filed by the plaintiffs for permission to lead additional evidence.

9. I have considered the submissions made by the counsel for the parties.

10. Admittedly, onus is upon the plaintiffs to prove execution of agreement to sell dated 7.11.1984 and in order to discharge said burden, the plaintiffs have already led their evidence in affirmative. Even the contesting respondents/defendants have already concluded their evidence. The application for additional evidence was filed by the plaintiffs at the belated

stage when both the parties have already adduced their evidence. The plaintiffs have failed to explain as to why at the earlier stage they failed to seek permission of the learned trial Court for comparison of the disputed thumb impression of Jaimal Singh on the agreement to sell with his admitted thumb impression. The plaintiffs cannot be allowed to invoke the provisions of Section 151 CPC that too at belated stage to fill up the *lacuna* in their case which they probably noticed while inspecting the judicial file while preparing for final arguments. In the given circumstances at this belated stage, no ground is made out to permit the plaintiffs to get compared disputed thumb impression of Jaimal Singh on the agreement to sell with his admitted thumb impression from Hand Writing/Finger Print Expert and then to examine the said expert by way of additional evidence. So, the learned trial Court rightly dismissed the application for additional evidence with regard to examination of hand writing expert.

11. However, as far as production of certified copy of judgment dated 7.2.2014 passed in RSA-2419-1984 titled Savitri and others v. Hukam Chand and others by way of additional evidence is concerned, during arguments, counsel for the contesting respondents pleaded no objection if permission is given to the plaintiffs to produce said document by way of additional evidence in the trial Court, reason being the said certified copy is *per se* admissible.

12. In light of above, the present petition is partly allowed and permission is granted to the plaintiffs to produce certified copy of judgment dated 7.2.2014 passed by this Court in RSA-2419-1984 titled Savitri and others v. Hukam Chand and others by way of additional evidence with

liberty to the contesting respondents/defendants to adduce evidence in rebuttal. To the extent stated above, impugned order dated 22.11.2018 is set aside.

13. Parties are directed to appear for further proceedings before the learned trial Court on the date already fixed in the trial.

(KARAMJIT SINGH)
JUDGE

October 4, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No