

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

CR-761-2018(O&M)

Reserved on:-18.5.2023

Date of Pronouncement:-24.5.2023

Somvir

...Petitioner

Versus

Mahender Singh (since deceased) through his LRs

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.Mohit Aneja, Advocate
for the respondents.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 6.12.2017 passed by District Judge, Palwal vide which in a pending appeal titled 'Somveer Versus Mahinder', an application under Order 41 Rule 27(a)(aa) CPC read with Section 151 CPC filed by the appellant had been dismissed.

2. Briefly stated, facts of the case are that in the appeal in question, the appellant had moved an application under Order 41 Rule 27(a)(aa) CPC read with Section 151 CPC contending that at the time of preparing arguments and having consultations with the counsel, it was advised that there had been multiple litigations regarding suit land, which was got filed by sons and daughter of the vendor of the present appellant/defendant and in the same there was crux of the matter in

controversy involved in this case but the said case titled 'Sahil etc. Versus Surtey @ Chander Bhan and Sombir etc.' had been ordered to be dismissed in default vide order dated 3.12.2014 by the Court of Civil Judge (Jr.Divn.), Hathin and it has not been restored till date. Similarly in another case, the same matter in controversy was raised by the plaintiff/respondent, namely Mahender by taking plea of pendency of another suit titled 'Mukhan son of Duli son of Jhandus Versus Surtey @ Chander Bhan vendor of the appellant and Sombeer etc.', which civil suit was decided on 11.8.2016 by the Court of Civil Judge (Jr.Divn.), Hathin. Both the judgments have attained finality, therefore, copies of judgments along with other relevant documents be allowed to be placed on record by way of additional evidence and out of such documents those relating to case No.57 of 2014 are documents of subsequent event and remaining are also document of subsequent event of elapse of the period of target date of the alleged and impugned agreement and same could not be filed even after exercise of due diligence but those are essential for proper and fair decision of the case. The documents sought to be produced were detailed in para No.6 of the application, which are as under:

- (i) The judgment and decree dated 11.8.2016 of the case No.57 of 2014 titled with 'Mukhan Versus Surtey @ Chander Bhan etc.'
- (ii) Certified copy of written statement filed by defendant No.3(Satto) in the said title case, with reply of the stay application.
- (iii) Certified copy of document Ex.P1 Jamabandi-2005-06.
- (iv) Certified copy of documents Ex.P2 Mutation of Sale.
- (v) Certified copy of jamabandi of Killa No.23/2.

- (vi) Certified copy of Sale deed dated 8.9.2010 Ex.P5.
- (vii) Certified copy of Sale deed Ex.D1, as of Ex.P5.
- (viii) Certified copy of Ex.D2, order dated 3.12.2014 of case No.112/2013 "Sahil etc. Versus Surtey etc."
- (ix) Certified copy of Ex.D3 Copy of Mutation No.3630.
- (x) Certified copy of Ex.D4, Sale deed.
- (xi) Certified copy of Mark D1 of the case No.238/2013 of the case titled with 'Rajesh Kumar Versus Surtey @ Chander Bhan etc.'
- (xii) Certified copy of sale deed dated 7.4.2015.
- (xiii) Certified copy of Ex.D5, Copy of FIR No.118 dated 22.4.2013.
- (xiv) Certified copy of Ex.D6, Copy of Mutation of sale No.3193, Sanctioned on 30.10.1996.
- (xv) Photocopy of plaint titled with 'Sahil etc. Versus Surtey @ Chander Bhan etc.', along with affidavit of suit.

3. That application was opposed by the respondent. It was dismissed by District Judge, Palwal vide the impugned order. For ready reference the operative part of the order is being reproduced as under:

5. *The applicant/appellant wants to produce on record certified copy of judgment and decree dated 11.8.2016 passed in civil suit No.57 of 2014, certified copies of written statements and other documents filed in the said suit, certified copies of some documents filed in civil suit titled as Rajesh Kumar Versus Sure etc. by way of additional evidence. It is not his case that the proposed documentary evidence was not within his knowledge at the time of*

leading evidence and he could not produce the same despite exercise of due diligence. No doubt, one of these documents which is certified copy of judgment and decree dated 11.8.2016 could not be produced by the appellant during the pendency of the suit as this judgment is shown to have been passed after passing of the judgment and decree by the learned lower court in this case. However, he failed to explain as to how the findings given in the judgment and decree dated 11.8.2016 passed in Civil Suit NO.57 of 2014 were relevant and material for the purpose of deciding the present appeal. In such circumstances, in my opinion, no reasonable ground has been made out for allowing application. Hence, the same is dismissed.

4. Such order left the appellant aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents, who have put in appearance through counsel.

5. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the revision petition.

6. Order 41 Rule 27 CPC deals with production of additional evidence in the appellate Court. The wording of this provision makes it clear that additional evidence at the appellate stage is not to be allowed in routine but in exceptional cases, which are enumerated in that very provision. It dilates that the parties to the appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the

Appellate Court. Three eventualities where such evidence can be allowed are dealt with in that very provision first being that the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted. The revision petitioner is not invoking that condition.

7. With regard to the second eventuality that party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed. Learned counsel for the revision petitioner tried to bring his case within this eventuality. However, I find that before invoking this ground, the appellant shall have to show that the evidence sought to be produced now in appeal has got relevance and is necessary for proper adjudication of the controversy.

8. In the present case, the plaintiff Mahender had filed a suit against defendant Somveer seeking recovery of Rs.10 lakhs along with interest and for permanent injunction for the reasons that the defendant had entered into an agreement to sell with the plaintiff on 12.2.2014 with respect to the agricultural land detailed in para No.1 of the plaint for a total consideration of Rs.32,25,000/- per acre, receiving Rs.10 lakhs as earnest money and the target date for execution of sale deed was fixed as 3.3.2014, however, the defendant backed out and did not turn up to execute the sale deed in favour of the plaintiff on the date fixed despite plaintiff having remained present there along with balance sale consideration amount and other charges and subsequently it transpired

that title of defendant was defective because a civil suit in that regard was pending. The defendant had not disclosed that fact to the plaintiff and fraudulently induced him to execute the agreement to sell, therefore the plaintiff had sought the recovery. The suit was contested by the defendants. The trial Court vide judgment and decree dated 31.3.2016 had decreed the suit of the plaintiff.

9. Feeling aggrieved the defendant had preferred an appeal before District Judge, Palwal, which is pending. It being so, the documents now sought to be produced in evidence, most of the documents were available and in existence when the proceedings before the trial Court were there and the defendants could very well have produced those documents in evidence. Merely by saying that despite due diligence the applicant could not produce those documents does not fulfil the requirement in terms of order 41 Rule 27 CPC and no case is made out for allowing additional evidence. The appellant Court had not found those documents to be necessary to enable it to pronounce judgment or for any other sufficient cause. The application for additional evidence was rightly dismissed by learned District Judge, Palwal.

10. The impugned order passed by the District Judge, Palwal is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands

dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

24.5.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No