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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1824-2017 (O&M)
Decided on: 16.09.2024

SANDURI DEVI AND ANOTHER

…Petitioners

Versus

SORAN RAM (SINCE DECEASED) THROUGH LRS AND ANOTHER

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. P. S. Chahal, Advocate for
Mr. G. S. Nagra, Advocate
for the petitioners.

None for respondent No.2.

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RITU TAGORE, J.

1. An application under Order 22 Rule 4 read with Section 151 Code of Civil Procedure, 1908 (for short referred to as 'CPC') for impleading the LRs of respondent No.1-Soran Ram was allowed by this Court vide order dated 19.11.2018. Notice to legal representative (LR) of respondent No.1 was given. Learned counsel for the petitioners/plaintiffs submit that petitioners No.1 and 2 are among the legal representatives (LRs) of the deceased respondent No.1-Soran Ram, while legal representative, respondent No. 1(iii) Anguri is another LR of deceased, who has also been

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arrayed as respondent No.2 in her individual capacity. In view of this, presence of all the LRs of deceased Soran Ram is complete.

2. As per the note of the Registry, Mr. Deepak Gupta, Advocate learned counsel for respondent No.2 was informed through e-mail. Despite one pass over and repeated calls, none has appeared on behalf of respondent No.2.

3. This revision is against the order dated 21.02.2017, passed by learned Additional Civil Judge (Senior Division), Dera Bassi, bearing Civil Suit No.338 of 2007 titled 'Sanduri Devi and another Vs. Soran Ram and another' vide which an application (Annexure P-3), filed by the petitioners/plaintiffs under Section 151 CPC seeking to examine Hardev Singh, a retired Kanungo son of Nasib Singh resident of House No.2535, Sector 69, Mohali, in additional evidence has been dismissed.

4. Learned counsel submits that petitioners-plaintiffs instituted a suit for possession, declaration and permanent injunction against the respondents-defendants with material averments that Soran Ram (since deceased)- respondent No.1 (defendant No.1 before the trial Court), had no legal right to execute the sale deed in respect of the suit land, being a joint Hindu ancestral coparcenary property. Moreover, respondent No.1/defendant No.1, had no legal necessity to sell the suit land. The learned counsel submits that the petitioners/plaintiffs had previously moved an application for additional evidence, which was dismissed by the learned trial Court. A revision bearing CR-6379 of 2015 titled 'Sanduri Devi and another Vs. Soran Ram and another' was filed against the said order, which was allowed

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vide order dated 26.02.2016 (Annexure P-2). However, due to illness of the Kanungo Harbhajan Singh, who had translated the Urdu record into Punjabi language, could not be examined. Under these circumstances, the petitioners/plaintiffs got the revenue record translated from Hardev Singh, a retired Kanungo and sought to examine him as their witness to prove the translated copies of the revenue record. In this regard, the petitioners/plaintiffs moved an application (Annexure P-3) detailing the circumstances and reason for examination of Hardev Singh. However, learned trial Court in arbitrary manner vide impugned order dated 21.02.2017, dismissed the application. The learned counsel submits that the evidence is essential and would help the learned Court in deciding the case effectively and completely. The petitioners/plaintiffs have already examined Kanungo, who has tendered his report alongwith revenue record, the excerpt, which is in Urdu language. By way of the present application (Annexure P-3) the petitioners/plaintiffs intend to place and prove on record the Punjabi translated copies of the record, as such, no such prejudice would be caused to the respondents/defendants. Learned counsel submits that similar application was moved by the petitioners in another case that was allowed in a revision petition No.1825 of 2017 titled 'Satya Devi and another Vs. Soran Ram and another'. In support of his version, learned counsel places on record the downloaded copy of the order passed in revision petition *ibid*. It is stated by learned counsel that the observation of the learned trial Court that petitioners by way of present applications wants to fill up the lacuna and the evidence as such is not necessary, is indefensible in the eyes of law, as the

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evidence is material to prove the ancestral nature of the suit land. A prayer is made to set aside the order.

5. It is also submitted by the learned counsel that the next date fixed before the learned trial Court is 17.09.2024, awaiting the orders from this Court. In support of his submissions, placed on record the *zimini* order dated 13.08.2024 passed by learned trial Court.

6. The contentions of the learned counsel for the petitioners have remained uncontested as the learned counsel on behalf of the respondent No.2 did not appear to address the arguments.

7. The learned trial Court, while dismissing the application, observed as follows in para no 4 :-

> *"4. After hearing the arguments addressed by both the counsels, this Court opined that the present application is filed by the plaintiffs under Section 151 CPC for permission to examine translator Harbhajan Singh aged 84 years by way of additional evidence. The learned counsel for the plaintiffs contended that in the present suit the plaintiffs have examined PW 4 Manpreet Singh Kanungo who has proved his report Ex. PW 4/1 and has tendered documents as a part of his report as Ex. PW 4/2 to PW 4/21. He tendered in his report Urdu documents Ex. PW 4/2 and Ex. PW 4/4 along with their translation as Ex. PW 4/3 and Ex. PW 4/5. The above said documents were not translated by him but got them translate from some other person named in the head note of the application. Even otherwise, it is a settled law that the technicalities should not come in the way of law courts to do the substantial justice between the parties and it is to be seen and appreciated by the law courts if a particular evidence in*

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the shape of a witness or document is required by the law courts for deciding the controversy between the parties and then the same should be allowed to brought on record irrespective of this stage of the case. Even otherwise no injustice or prejudice is going to be caused to the defendants in case the above said witness is allowed to be examined by the plaintiffs by way of additional evidence as the defendants shall get a reasonable opportunity to cross examine the said witness. On the other hand, learned counsel for the defendants contended that the above said documents are matter of record as the same was tendered by PW-4 in his evidence. The learned counsel for the defendants contended that in the present case the issues were framed on 20.03.2008 and the first evidence was led by the plaintiff after availing several opportunities and above said Kanungo was examined after sufficient gap. This witness has proved on record the excerpt report on 28.04.2016 and after getting several opportunities to lead their evidence, the evidence of the plaintiffs was closed on 06-03-2014. Thereafter defendants led their evidence and close evidence on 14.07.2016. Thereafter the present case was fixed for rebuttal and arguments and then after availing several opportunities the present application is filed just to linger on the proceedings. The law in this point is very clear by our own High Court judgment cited as ***CR No. 3002 of 2015 in case titled as Rita Arora versus Kamaldeep Singh and others decided on 07-07-2015.*** *In that case, it was held that in case application for additional evidence is allowed, that would tantamount to allow the plaintiffs to fill up the lacuna in the evidence which is not permissible as per law. The said preposition was also discussed in* ***CR No. 2136 of 2016****. It is further well settled law that no new witness can be allowed to improve the evidence of the previous witness. The learned counsel for the defendants has*

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lastly prayed that the application of the plaintiff should be dismissed with heavy cost. In view of the above detailed discussion, this Court opined that in the present case the plaintiffs have examined PW 4 Kanungo to prove the excerpt report. The translation which they want to prove was the part of the excerpt report and learned counsel for the defendants has cross- examined this witness at length. It is admitted fact that this witness admitted in his cross examination that he got the translation of documents Ex. PW 4/2 and Ex. PW 4/4 done from other person. Thereafter, defendants led their evidence and close the evidence without examining any witness to contradict the fact that the translation proved by the plaintiffs is wrong or incorrect. The documents proved by the plaintiff were the part of the excerpt report and to that effect PW 4 was cross-examined at length by the counsel for the defendants. This Court opined that there is no need to further examine any evidence by way of additional evidence to prove the translation which is already exhibited and part of the excerpt report. There is no need to prove separately any part of the document which was already exhibited by other witness.

Therefore, the present application of the plaintiff under Section 151 of CPC is hereby dismissed. Now to come upon 01.03.2017 for arguments."

8. A perusal of the impugned order indicates that the learned trial Court observed that the petitioners/plaintiffs by way of application under Section 151 CPC, sought permission to examine the translator, Hardev Singh, by way of additional evidence because another witness Harbhajan Singh, due to his illness could not be examined. Learned trial Court also noted that the petitioners had already examined Manpreet Singh, Kanungo, PW-4, who had proved the report Ex.PW-4/1 and tendered the documents

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Ex.PW-4/2 to 4/21 (which included the translated copies of the record), deposing that translation was not done by him. The learned trial Court observed that the petitioners, by way of additional evidence, cannot be allowed to improve upon the evidence by examining another witness, especially since the documents are already on record. Therefore, there is no need to prove the translation, again.

9. However, it is undisputed that the revenue record is in Urdu language as well as some of the translated documents are in Punjabi language. According to the deposition of PW-4, he did not prepare the translation of the record. It is the settled principle of law that revenue excerpt is required to be proved formally by examining the witnesses who prepared it. In **Banta Singh and others vs. Phuman Singh s/o Jiwand Singh and others, 1972 PLJ 275**, it was held that the revenue excerpt must be formally proved by examining as witness the person who prepared it. High Court Rules and Orders, Volume-I, Rule (v) and (vi) of Chapter IX, provide the procedure for proving the excerpt. It is also undisputed that the petitioners-plaintiffs could not examine, Harbhajan Singh, who translated the revenue record for them, due to his illness and the petitioners in his place intend to examine Hardev Singh, the person who had translated the revenue record in Punjabi language.

10. It is settled position of law that rules of procedure are meant for advancing the cause of justice. Every effort should be made by the Courts to decide the litigation between the parties on merits. Furthermore, technicalities should not be allowed to stand while doing complete and

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substantial justice between the parties. Thus, to the considered opinion of this Court examination of the witness Hardev Singh would facilitate the learned trial Court to arrive at a judicious conclusion. By allowing the evidence, no prejudice is going to be caused to the respondents-defendants; as said revenue documents are already on the record. Furthermore, the respondents-defendants would be at liberty to conduct the cross-examination of the witness.

11. As such, in these circumstances to do complete justice between the parties, I believe that one effective opportunity be granted to the petitioners/plaintiffs, to allow them to examine their witness Hardev Singh, a retired Kanungo son of Nasib Singh resident of House No.2535, Sector 69 Mohali, in evidence. Certainly, there is delay on the part of the petitioners. There is an established practice of law that the delay can always be rectified by imposing costs. Accordingly, impugned order dated 21.02.2017 is set aside, subject to payment of Rs.10,000/- as costs payable by the petitioners/plaintiffs to respondents/defendants.

12. The learned trial Court shall provide one effective opportunity to the petitioners to allow them to examine their witness Hardev Singh a retired Kanungo son of Naseeb Singh resident of House No.2535, Sector 69 Mohali, at their own responsibility, on due date as fixed before the learned trial Court or within 07 days thereafter and make payment of costs. Petitioners/plaintiffs are directed to appear before the learned trial Court on the due date of hearing as fixed by the learned trial Court, and make payment of costs and lead their evidence, as allowed.

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13. It is made clear that in the case of default, this order shall automatically be vacated.

14. Resultantly, with the above said observations made and directions issued, the present petition is accordingly allowed.

15. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

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

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