

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CR-520-2024 (O&M)
Decided on: 01.03.2024

Sohan Singh and others

...Petitioners

Versus

Mohan Singh

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Vishal Sharma (Vasudeva), Advocate
for the petitioners.

RITU TAGORE, J. (Oral)

1. This revision is against the order dated 06.01.2024 passed by learned Additional Civil Judge (Senior Division), Hoshiarpur in a Civil Suit No.50 of 2020 titled ‘Mohan Singh Vs. Sohan Singh etc.’ whereby the application dated 08.12.2023 (Annexure P-4) filed by Sohan Singh-petitioner (defendant No.1 before the trial Court) under Order 7 Rule 14 read with Section 151 Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) for leading additional evidence, has been dismissed.
2. Considering the limited prayer made in this revision, notice to respondent is dispensed with.
3. Learned counsel for the petitioners submits that respondent (plaintiff before the trial Court), filed a suit for possession of property identified with letters ‘ABCD’, and bounded with boundaries as outlined and highlighted in red color in the site plan annexed and detailed in the head

note of the plaint (Annexure P-1), after removal of superstructure raised by the petitioners.

4. Learned counsel contends that the parties involved in the suit are brothers. The suit property is a house previously allotted to their father, Kartar Singh, and subsequently to the petitioner, respondent (plaintiff) and their other brothers Joginder Singh and Avtar Singh under allotment order dated 12.02.1993 issued by Punjab Wakf Board. In prior litigation, the petitioner, respondent and their other two brothers were declared to have been in joint possession of the suit property. The respondent has also admitted the same in the earlier litigation but now falsely claimed ownership regarding the suit property in the present suit. The learned counsel submits that the petitioners' dispute the accuracy of site plan filed by the respondent in the present suit, alleging to be incorrect, and not reflective of actual and factual position prevailing at the spot. The learned counsel further submits the respondent's claim that petitioners have no concern with the suit property is incorrect.

5. The counsel for the petitioners further submits that petitioner-Sohan Singh had moved an application under Order 7 Rule 14 read with Section 151 CPC (Annexure P-4), seeking permission to tender the documentary evidence such as allotment letter in the name of the parties to the suit and other brothers, receipt dated 19.02.1993, copy of lease deed and receipt dated 19.02.1993 and copy of Khasra Girdawari, and also annexed the aforesaid documents alongwith the application, pleading them to be material evidence for just and complete decision of the case. The learned counsel submitted that the learned trial Court failed to appreciate the significance of the aforementioned documents and also failed to notice that proposed evidence is certified copies of the record and was not disputed by

the respondent in previous litigation. It is stated that learned trial Court materially erred in dismissing the application. The learned counsel for the petitioners reiterates that the proposed evidence is necessary to be placed on record for the effective and complete adjudication of the controversy as the proposed evidence makes it explicit that parties to the suit and other brothers have equal interest in the suit property. A prayer is made to set aside the order and permit presentation of proposed evidence. In support of his arguments, learned counsel referred to the judgments of co-ordinate Bench of this Court titled **‘Manmohan Singh Vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur and others’ 2015 (5) RCR (Civil) 661** and **‘Dalbir and others Vs. Surajmal and others’ 2011 SCC OnLine P&H 11166.**

6. It is a matter of record that respondent-Mohan Singh filed a suit for possession (Annexure P-1) regarding the suit property detailed with letters ABCD and highlighted with red color as mentioned in the site plan, asserting that all the brothers are residing in their separate houses. The houses marked with letters ABCDEFGH, is exclusively owned by the respondent, and the petitioners have no interest in it. Further, pleaded that in the earlier litigation bearing suit No.17 dated 15.04.2011, the respondent (plaintiff) was declared to be in exclusive possession of the property in dispute, with the petitioners having no concern in the suit property. The respondent also alleged that in month of April 2011 the petitioners along with other, forcibly entered upon the suit property and raised illegal construction as shown with letters ABCD in the site plan attached. On the aforesaid material assertions, the respondent filed the suit for possession. In their written statement, petitioners completely denied the averments of the respondent and asserted that they have equal interest in the suit property.

They also disputed the correctness of the site plan relied by the respondent.

7. By way of the application (Annexure P-4), the petitioner-Sohan Singh intended to place on record the documents indicating that both the parties to the suit and other brothers hold equal interest in the suit property, which was allotted to them vide allotment letter (Annexure P-6) and their joint possession is reflected in khasra girdawari.

8. No doubt the provision of Order 18 Rule 17-A CPC meant for production of evidence no more exist on the statute books but the Courts have not been rendered powerless to allow the reception of evidence when it is required to assist in rendering justice. The Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu v. Union of India 2005 (3), RCR (Civil) 530** observed that even after deletion of Order XVIII Rule 17A of the Code of Civil Procedure, additional evidence can be allowed under Section 151 of the Code of Civil Procedure only.

9. In the given factual matrix, it appears that the documents in question are essential for the proper adjudication of the case. This would assist the Court in comprehensively and effectively deciding the matter pending before it. The counsel for the petitioners admitted that petitioners had applied for certified copies of the documents after the closure of their evidence. In application (Annexure P-4), it is pleaded that the petitioners obtained the certified copies of the documents in question after the closure of their evidence. However, material evidence should not be disregarded on hyper- technicalities and the delay can be atoned by imposing cost.

10. In view of the aforesaid discussion, to the considered opinion of this Court, learned trial Court fell in error while dismissing the application of the petitioners. Accordingly impugned order 06.01.2024 is set aside and petitioners are given one opportunity to place on record the proposed

evidence, subject to payment of Rs.25,000/- as costs to be paid to the respondent. The trial Court is directed to give one effective opportunity to petitioners and permit them to lead the aforesaid evidence on their behalf.

11. The revision petition is allowed accordingly.
12. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

01.03.2024
Rimpal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No