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

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Date of Decision: 26.02.2024.

Narinder Kumar Sharma

...Petitioner.

Versus

Chanchal Kumari and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Umesh Aggarwal, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner/plaintiff has challenged order dated 10.10.2023 (Annexure P-9) passed by learned trial Court, vide which application filed by the petitioner/ plaintiff for summoning of witnesses, has been rejected.

2. The brief facts relevant for the adjudication of the present revision petition are that petitioner/ plaintiff filed a suit for declaration against the respondents to the effect that the alleged sale deed dated 19.05.2009 allegedly executed by the petitioner/ plaintiff in favour of respondent No.1 is invalid and is without consideration. Further, that the sale deed executed by respondent No.1 in favour of respondent No.3 is also void, ab~initio and without any consideration. Relief of permanent injunction was also sought for restraining the respondents from forcibly

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dispossessing the petitioner from the suit property.

3. Upon notice, respondent No.1 appeared and filed written statement contesting the said suit by submitting that the sale deed dated 19.05.2009 is a legally executed document and respondent No.1 had paid valuable consideration of Rs.1,40,000/- to the petitioner. Then again in the replication the pleadings of written statement were denied and that of the plaint were reasserted. Thereafter, as per the pleadings of the parties, the issues were framed and both the parties led their respective evidence.

4. Thereafter, the petitioner filed an application for summoning of witnesses to rebut the claim of the respondents regarding making payment to Neena Sharma, Meena Sharma and Madhu Sharma. Vide the impugned order dated 10.10.2023, the trial Court had dismissed the aforesaid application of the petitioner. Hence, the petitioner knocked the doors of this Court by way of filing the present revision petition.

5. Learned counsel for the petitioner has contended that Mohit Sharma, defendant No.3 while appearing as DW2, during his cross-examination has stated that at the time of execution of the sale deed dated 27.03.2012, he had paid the amount of consideration to Neena Sharma, Meena Sharma and Madhu Sharma, who are the parental aunts of the witness Mohit Sharma. Thereafter, the petitioner had filed the application for summoning of the witnesses, so he could rebut the false and frivolous claim raised by the respondents, which had been erroneously dismissed by the trial Court. The trial Court has wrongly held that the petitioner had tried to fill up the lacuna by filing the present application. Only while leading

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their evidence, the defendants tried to create a new defence and the witnesses of the defendants stated that the amount of consideration was paid to the sisters of the petitioner namely Neena Sharma, Meena Sharma and Madhu Sharma. which is contrary to the stand taken by the respondents in their written statement. So the examination of the witnesses, as alleged by the petitioner, is essential to rebut the newly added defence raised by the respondents.

6. I have heard learned counsel for the petitioner and have gone through the relevant record.

7. The perusal of the impugned order reveals that the petitioner wants to examine Clerk of BOI, Neena Sharma, Meena Sharma and Madhu Sharma in rebuttal evidence, to prove that the sale deed in question was executed without any sale consideration. The petitioner/ plaintiff was to lead affirmative evidence in order to prove his case that the sale deed in question is null and void and without any consideration. He cannot be allowed to lead in rebuttal evidence which ought to have been produced in the affirmative evidence. These witnesses could have been produced by the petitioner/ plaintiff when he was leading his evidence in the affirmative. The perusal of the written statement filed by defendant No.1 (Annexure P4) also reveals that in para No.7 on merits, it has been alleged that the sale deed dated 27.03.2012 had been executed by the replying defendant and her daughters namely Neena Sharma, Meena Sharma and Madhu Sharma and son Charanjit Lal in favour of defendant No.3, after receiving sale consideration of Rs.8,72,000/-. So, it cannot be said that this defence has been raised by the defendants only during their evidence, when it was also

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their pleading in the written statement.

8. Thus, there being no illegality or infirmity in the impugned order no interference there with is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits, stands dismissed.

9. However, the petitioner is at liberty to move an application for leading the additional evidence, which if moved, will be decided by the trial Court as per law and this order shall not have any impact upon the findings of the said application.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

26.02.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No