

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

CR-4559-2019

Reserved on 06.12.2023

Date of decision: 28.02.2024

Har Narain

...Petitioner

Versus

Smt. Kamla and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Deepak Girotra, Advocate for the petitioner.

Mr. Shobhit Phutela, Advocate and
Mr. Vikram Singh Brar, Advocate
for respondents No.2 to 4.

KARAMJIT SINGH, J. (ORAL)

1. This revision petition has been filed by the petitioner/plaintiff against order dated 22.05.2019 Annexure P-8 passed by the Court of Civil Judge (Senior Division), Rohtak whereby an application filed by the petitioner to produce additional evidence has been dismissed in Civil Suit titled as Har Narain Vs. Smt. Kamla and others.

2. The brief facts of the case are that petitioner filed suit for declaration and possession by seeking partition of the suit property, on the ground that the suit property was purchased by Sube Singh father of the petitioner, in the name of his wife Chander Pati vide sale deed 12.04.1962. During his life time Sube Singh raised construction in the said property by spending money from his own pocket. Sube Singh died leaving behind his wife Chander Pati, son Har Narain and Kamla wife of pre-deceased son

Ram Saran. On death of Chander Pati, the suit property was jointly succeeded by petitioner Har Narain and Kamla widow of Ram Saran in equal shares and is still lying joint.

3. The suit is being contested by the respondents. Respondents No.2 to 4 took plea that they are bonafide purchasers of the suit property from respondent No.1 for valuable consideration without notice and at the time of said sale, respondent No.1 Kamla was exclusive owner in possession of the property so sold.

4. After settlement of issues, the case was fixed by the trial Court for evidence of petitioner and thereafter, petitioner concluded his evidence. Even contesting defendants also adduced evidence. The present application for additional evidence to produce and prove certified copy of the sale deed dated 26.03.2013, was filed when the case was fixed for rebuttal evidence. As per petitioner, the said sale deed was executed by respondent No.1 with regard to her one half share in his favour regarding one another property which was jointly owned by petitioner and respondent No.1. The application was contested by the respondents.

5. After hearing the counsel for the parties, the learned trial Court dismissed the said application vide order dated 22.05.2019 on the ground that the said document which was executed in year 2013 was in knowledge of the petitioner since beginning and otherwise also the said document is beyond pleadings.

6. I have heard the counsel for the parties.

7. The counsel for the petitioner submits that in their written statement contesting respondents have taken plea that the suit property fell

to the share of respondent No.1 in a family settlement and thereafter, respondent No.1 sold the same for valuable consideration to respondents No.2 to 4, who are claiming their ownership and possession over the suit property. That respondent No.1 also took the same plea in her separate written statement. It has been further contended that no such family settlement had ever taken place between petitioner and respondent No.1. That in order to establish this fact, the petitioner intends to produce registered sale deed dated 26.03.2013 whereby respondent No.1 sold her share out of their another joint property to the petitioner. It is further contended that the petitioner was waiting for appearance of respondent No.1 as her own witness to confront her with aforesaid sale deed. That however, she intentionally did not appear in witness box in order to avoid said confrontation. That faced with this situation, there was no other recourse with the petitioner except for moving an application to produce and prove the said sale deed by way of additional evidence. The counsel for the petitioner further submits that learned trial Court without appreciating the aforesaid aspect, dismissed the application simply on the ground that it was filed at a belated stage and the said document is beyond pleadings. The counsel for the petitioner further submits that the said document is necessary for the proper adjudication of the suit. So prayer is made that the present petition be allowed. In support of his arguments the counsel for the petitioner has placed reliance upon the decision of this Court in CR No.7095 of 2009 titled as ***Jagdish Kumar Vs. Manjit Kaur*** decided on 26.04.2010.

8. The present petition is resisted by respondents No.2 to 4. The

counsel appearing on behalf of the contesting respondents while supporting the impugned order has *inter alia* contended that actually the suit has been filed by the petitioner in collusion with respondent No.1 to defeat the rights of respondents No.2 to 4 who are bonafide purchasers of the suit property for valuable consideration, without notice. It has been further contended that in case any such sale deed was executed by respondent No.1 in favour of the petitioner in year 2013, then the petitioner must be knowing about the same at the time of filing of the suit. However, the plaint is silent regarding any such sale deed. That it is settled law that a party cannot travel beyond its pleadings. So the trial Court correctly dismissed the application moved by the petitioner at a belated stage to produce sale deed dated 26.03.2013 by way of additional evidence. In support of his contentions, the counsel for contesting respondents has placed reliance upon the decision of the Coordinate Bench of this Court in CR-919-2023 titled as ***Ajay Singh Chaudhary and Others Vs. Shiv Raj Singh*** wherein there was challenge laid to agreement to sell which was propounded by the defendants in their counter claim to the suit filed by the plaintiff seeking declaration and permanent injunction and on conclusion of evidence, counter claimants filed an application to call stamp vendor and attesting witness and to produce death certificate of another attesting witness, by way of additional evidence. The said application was dismissed by the trial Court and even the revision petition filed against the said order was also dismissed by this Court vide order dated 14.09.2023.

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

10. The admitted facts are that petitioner filed suit for declaration and partition of property bearing No.5 ad-measuring 162 sq situated in Azad Nagar, Kanehli Road, Rohtak and the suit is being contested by respondents.

11. The plea of the petitioner is that the suit property was purchased by his father Sube Singh (since deceased), ostensibly in the name of his wife Chander Pati (mother of petitioner) vide sale deed dated 12.04.1962. Sube Singh raised construction of a house in the said property by spending money from his own expenses. On the death of Sube Singh and Chander Pati, the suit property was succeeded by petitioner and Kamla wife of Ram Saran (pre deceased son of Sube Singh and Chander Pati) in equal shares. The petitioner has also challenged the sale deeds dated 02.03.2004, 11.03.2005 and 18.10.2005 alleged to be executed by respondent No.1 Kamla in favour of other respondents and also sought possession of half share out of the suit property by way of partition.

12. The suit is contested by the respondents. Respondent No.1 took plea that she became exclusive owner of the suit property on the basis of family settlement which was admitted by the petitioner in the earlier suit having civil suit No.41 of 2008 titled as Har Narain Vs. Smt. Kamla and Others and as such she being owner of the suit property sold the same to respondents No.2 to 4 vide different registered sale deeds.

13. Respondents No.2 to 4 while contesting the suit took plea that they are bonafide purchasers of the suit property for valuable consideration without notice.

14. After settlement of issues, the petitioner concluded his evidence

and subsequently filed an application for permission to produce and prove registered sale deed dated 26.03.2013 whereby half share out of another property jointly succeeded by petitioner and respondent No.1 from Chander Pati, was sold by respondent No.1 to petitioner.

15. The sale deed in question is not directly related to the suit property and as such may have not been pleaded in the plaint considering it to be an insignificant document by the petitioner. But still it could have been put to respondent No.1 in her cross examination (subject to all just exceptions) by the petitioner, if respondent No.1 had appeared in the witness box. The sale deed in question is a registered document and its certified copy is admissible in evidence and the possibility of it being fabricated by the petitioner in a back date is very remote. There is no doubt that the application for additional evidence was filed at a very advance stage of proceedings, when both the parties have already led their evidence, and case was posted for rebuttal evidence.

16. Admittedly, earlier under Order 18 Rule 17-A CPC additional evidence could be permitted by the Court but the said provision had since been deleted w.e.f. 01.07.2002. However, the Court could invoke its inherent jurisdiction under Section 151 CPC for permitting production of such evidence/document, for advancement of cause of justice. Further It is well settled that rules of procedure are mere hand maids of justice and a pragmatic approach has to be adopted while dealing with the rights of the parties. The technicalities of procedure cannot be used to thwart the ends of justice, as was observed by this Court in Civil Revision No.3395 of 2002 titled as ***Punjab State Warehousing Corporation, Chandigarh Vs.***

Chaman Lal, decided on 12.08.2003.

17. Further, the Hon'ble Supreme Court in **KK Velusamy Vs. N. Palanisamy** 2011 (2) RCR (Civil) 875 held as under:-

There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.

18. This Court in **Pawan Kumar Vs. Raj Kumar and Others 2007 (1) RCR (Civil) 385**, held that once it is felt that the evidence was necessary for just decision of the case, the delay cannot be a ground to disallow the same.

19. The sale deed in question dated 26.03.2013 is having bearing on the subject matter in dispute even if, it is not relating to the suit property and is relevant and required in the interest of justice for just decision of the case. The facts of case law referred by counsel for respondents are distinguishable from that of case at hand. The explanation for delay in production of the said sale deed in evidence, as has been given by the petitioner seems to be plausible.

20. In light of the above, the impugned order is not sustainable and deserves to be set aside. Accordingly, the present revision petition is allowed and the impugned order dated 22.05.2019 (Annexure P-8) passed

by the Court of Civil Judge (Senior Division), Rohtak is set aside and the application moved by the petitioner to produce and prove sale deed date 26.03.2013 by way of additional evidence is allowed subject to costs of Rs.10,000/-. The aforesaid costs shall be paid by the petitioner to respondents No.2 to 4. The learned trial Court shall give one opportunity to the petitioner to conclude the additional evidence and on conclusion of the same, the trial Court is to give one opportunity to the respondents to lead evidence in its rebuttal. The parties are directed to appear before the learned trial Court on 14.03.2024.

28.02.2024

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**