

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

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**CR-6555-2023 (O&M)
Decided on: 19.01.2024**

Rajeshwar Singh

...Petitioner

Versus

Ramesh Kumari (since deceased) through LR's and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Yadvinder Singh Turka, Advocate
for the petitioner.

Mr. Raj Kumar Gupta, Advocate
for respondents No.1(iii) and 2.

Service of respondents No.1(i) and 1(ii) and
3 (proforma respondent) dispensed
with vide order dated 03.11.2023.

RITU TAGORE, J.(Oral)

1. The petitioner has filed this revision petition against the order dated 10.10.2023 (Annexure P-5) passed in CA No.91 of 2017 titled 'Ramesh Kumari and another Vs. Rajeshwar and others' whereby learned Additional District Judge, SAS Nagar partly allowed the application moved by respondents (appellants-defendants before the learned Appellate Court) under Order 41 Rule 27 Code of Civil Procedure (for short referred to as 'CPC') for additional evidence.

2. Upon notice, respondent No.1 (iii) and 2 filed the reply and opposed the prayer of the petitioner, pleading non- maintainability of the petition and being devoid of merits.

3. Learned counsel for the petitioner (plaintiff before the trial Court) submits that petitioner filed a suit for declaration, seeking his ownership and possessory rights in the suit property (fully detailed in the head note of the plaint), to the extent of 1/4th share on the basis of natural succession after death of his father late Sant Rajinder Singh, by declaring relinquishment deed dated 08.07.2009 and the subsequent mutations No.2266, 2314 and 1453, entered and sanctioned in the revenue record, on the basis of the said relinquishment deed as null and void, not binding upon the right, title and interest of the petitioner to the extent of his share in the suit property, with additional relief of grant of decree of permanent injunction against the respondents (defendants), restraining them from alienating the suit land to the extent of his share.

4. Counsel for the petitioner further submits that respondents (defendants) appeared, filed their written statements, and parties led their respective evidence on the issues framed by the Court, on the pleadings submitted by the parties. Thereafter, the learned trial Court on appraisal of the evidence, decided the suit and decreed the same in favour of the petitioner (plaintiff) vide judgment and decree dated 11.01.2017 (Annexure P-1).

5. Arguing further, learned counsel for the petitioner submits that along with the appeal respondents (defendants) filed an application dated 17.02.2017 under Order 41 Rule 27 CPC (Annexure P-2) seeking permission to produce additional evidence and again, moved another application dated 09.11.2021 (Annexure P-3) to lead additional evidence. The petitioner resisted the applications, claiming their non-maintainability; with an attempt on the part of the respondents to fill up lacunae in their evidence. It is

argued that learned Appellate Court, erroneously allowed the application for additional evidence, though partly.

6. Learned counsel further submits that additional evidence can be allowed, when such evidence was not in the knowledge of the applicant despite exercise of due diligence, or could not produce the same. However, learned Appellate Court overlooked the above legal principles while allowing the application. In fact, respondents had prior knowledge of the death of the witnesses to the alleged Wills, as son of one witness deposed about the death of his father. Despite that, no cogent reason was furnished by the respondents for not producing the death certificates of the marginal witnesses to the alleged Wills, especially when relief claimed is on the basis of the alleged Wills.

7. Further, it is stated that learned Appellate Court also failed to note that after framing additional issue with respect to the Wills, respondents (defendants) led evidence. In this regard, reference was made to para No.6 and 7 of the judgment of the trial Court, wherein it is mentioned that additional issue was framed on 03.01.2017. Thereafter, the parties led the evidence.

8. Learned counsel for the petitioner argues that the respondents (defendants) had the opportunity to lead the evidence at the time when the additional issue was framed. Now, they should not be permitted to lead the evidence that was left out by them. Learned Appellate Court, unfortunately, failed to note this material fact and permitted the respondents to lead additional evidence, contrary to the spirit of Order 41 Rule 27 CPC. This has resulted in filing up lacunae in the case of the respondents (defendants), causing great prejudice to the petitioner. A prayer is, thus, made to allow the

revision and set aside the impugned order dated 10.10.2023, which is unsustainable in the eyes of law.

9. Contra, learned counsel for the respondents (defendants) submits that by way of the additional evidence, respondents wanted to bring on record the factum of the death of marginal witnesses to the Wills set up by them. It is stated by learned counsel that filing of application for additional evidence along with the appeal, is a matter of record. Furthermore, from para No.6 of the judgment of the trial Court, it is apparent that additional issue regarding the execution of the Will was framed by the trial Court at the fag end of the *lis* on 03.01.2017 and case was decided on 11.01.2017. The learned counsel submits that in such a short span of time and further, due to lack of experience with the counsel for the respondents (defendants), they failed to take requisite step to lead the evidence on the newly framed issue. The aforesaid facts were also incorporated in the applications for additional evidence. Learned counsel for the respondents further submits that the death certificates are official documents and their authenticity cannot be doubted. Further, for any lapse on the part of the counsel, litigant should not be penalised. In support of his contentions, referred to '**Ram Niwas Vs. Kalu Ram and another**' 2012(4) R.C.R.(Civil) 56 and '**Joginder Singh Vs. Shangara Singh and others**' 2020(1) R.C.R.(Civil) 364, and prayed for the dismissal of revision.

10. I have heard the learned counsel for the parties and gone through the record with their able assistance.

11. It is a matter of record that civil suit filed by petitioner (plaintiff) was decreed in his favour and appeal preferred by respondents (defendants) is pending for adjudication before learned ADJ, SAS Nagar and

request of respondents-defendants for leading additional evidence in the aforesaid appeal was partly allowed by the impugned order. Learned Appellate Court permitted the respondents- defendants to place on record the death certificates of attesting witnesses to the Wills namely, Bakhat Ram and Munshi Ram by concluding that death certificate is a public record, whose authenticity is not in dispute. Further, the Court is fully competent to allow any party to lead additional evidence at appellate stage, which is helpful to the Court to decide the controversy completely and effectively, and petitioner (plaintiff) will have the opportunity to lead rebuttal evidence qua the additional evidence so allowed. Insofar as, the request to examine Dinesh Kumar in place of Kartar Singh, who died during the pendency of the application, was dismissed holding that this would tantamount to filling up lacunae left by the respondents- defendants-appellants.

12. Before appreciating the contentions raised herein, it would be worthwhile to look into the relevant provisions of Section 107 and Order 41 Rule 27 CPC which are reproduced as under:-

“Section 107 of CPC

“ 107. Powers of Appellate Court. (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

- (a) to determine a case finally;*
- (b) to remand a case;*
- (c) to frame issues and refer them for trial;*
- (d) to take additional evidence or to require such evidence to be taken.*
- (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.*

Order 41 Rule 27 CPC

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*

(aa) the 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, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the Court shall record the reason for its admission.”

13. Bare perusal of Section 107 of CPC would show that it empowers an Appellate Court to determine a case finally, to remand a case, to frame issue(s) and refer them for trial and to take additional evidence or to require such evidence to be taken. With this substantive enabling power, Order 41 Rule 27 CPC came into being, which lays down further conditions and circumstances as enumerated in the Order in which Appellate Court can take additional evidence. In year 1976, sub rule (aa) was inserted in Order 41 Rule 27 (1) CPC which provides that if a party seeking to produce additional evidence, establishes that despite exercise of due diligence, evidence which is sought to be produced, was not within his knowledge or despite exercise of due diligence, evidence could not be produced by him when decree appealed against was passed, could be granted permission to produce such evidence. Thus, this clause further enables the Court to give permission but at the same time, clause (b) of Order 41 Rule 27(1) CPC empowers the Appellate Court to give permission for additional evidence if the Court itself requires any document to be produced or any witness to be examined for the purpose of its assistance for coming to a just conclusion and for any other substantial cause. ‘Substantial cause’ though has not been defined, therefore, it depends upon the facts and circumstances of each case.

14. Now coming to the facts of present revision. Para No.5 of the Judgment of the trial Court (Annexure P-1) reveals that on filing of replication by petitioner (plaintiff), learned trial Court, on 10.07.2015 framed the following issues.

“1. Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayer for?OPP

3. Whether the suit is not maintainable in the present form?OPD

4. Whether the plaintiff has not come to the Court with clean hands, if so, its effect on the suit?OPD

5. Whether the suit is time barred?OPD

6. Relief.”

15. Further, on basis of order dated 03.01.2017, (as detailed in the para No.6 of the judgment of the trial Court) additional issue 5(a) qua Wills was framed as under:-

“5(a). Whether Sant Rajinder Singh executed the Will as stated in the written statement of defendants No.1 and 2 in favour of defendant No.1 Ramesh Kumar?OPD (1&2)”

16. In para No.7 of the judgment, the learned trial Court observed that “thereafter, parties were asked to lead their evidence in support of their respective claims”. The trial Court passed the judgment on 11.01.2017.

17. In the application for additional evidence dated 17.02.2017 (Annexure P-2) moved by the respondents-defendants before learned District Judge, permission was sought to produce Kartar Singh as DW to prove the Wills dated 30.05.1974 and 01.12.1977 and the death certificates of Munshi Ram and Bakhat Ram the attesting witnesses to the Will as well as medical certificate of appellant No.1 regarding her illness and inability to speak. Another application dated 09.11.2021 (Annexure P-3) was moved by the respondents (defendants) seeking permission to examine Dinesh Kumar

in place of Kartar Singh, who died during the pendency of appeal proceedings in order to prove Wills in additional evidence, with additional plea of lack of experience of counsel for the respondents (defendants) to take necessary steps to lead the evidence to prove the Wills. The petitioner (plaintiff), in a corresponding reply (Annexure P-4), pleaded respondents-defendants' failure to exercise due diligence in producing the requisite evidence, despite having onus to prove the Wills. Additionally, claimed that respondents had the knowledge of availability of the requisite evidence. The plea of counsel being novice in profession was also denied.

18. It is evident from the impugned order that first application filed by the respondent-defendant was not decided earlier and both the applications for leading additional evidence were decided together by the Appellate Court, partly allowing the request of the respondents-defendants as indicated in the impugned order.

19 From the above factual position, it is apparent that after framing of additional issue on 03.01.2017, the final judgment was pronounced by the learned trial Court on 11.11.2017 within a week. In the judgment of the learned trial Court, it is not specifically observed that entire evidence as detailed in the judgment, was led after framing of the additional issue. So, the contention of the learned counsel for the petitioner that word 'thereafter' occurring in para No.7 of the judgment be construed as such, cannot be accepted, particularly, when no zimni orders or any other record has been placed on record by the petitioner to substantiate his contention.

20. It is settled rule of law that if Appellate Court finds that evidence sought to be produced is relevant and would enable the Court to pronounce the judgment effectively, can call for such evidence. Provisions

of Order 41 Rule 27 CPC even empowers the Court to allow such evidence for any other substantial cause.

21. In ***Billa Jagan Mohan Reddy and another v. Billa Sanjeeva Reddy and others, (1994)4 SCC 659***, Hon'ble the Supreme Court opined that if the documents are found to be relevant to decide the real issue in controversy and when the court feels that interest of justice requires that the documents may be received, exercising the power under Order 41 Rule 27 Civil Procedure Code, the appellate court would receive those documents and consider the effect thereof. However, an opportunity be given for rebuttal, if any, and their relevance and effect be considered in deciding the issues arising in controversy.

22. Our High Court, in ***Ram Kishan v. Inder Pal and others, 2004(3) RCR (Civil) 572***, observed as under :

"5. The afore-mentioned provision have been subject-matter of interpretation of the Supreme Court in the case of K. Venkataramiah v. A. Seetharama Reddy, AIR 1963 Supreme Court 1526; Natha Singh v. The Financial Commissioner, Taxation, AIR 1976 Supreme Court 1053; Land Acquisition Officer v. H. Narayanaiah etc., AIR 1976 Supreme Court 2403 and P. Purushottam Reddy v. Pratap Steels Ltd., (2002(2) RCR (Civil) 70 (SC): 2002(2) SCC 686. On the basis of the afore-mentioned judgments it can be concluded that the Ld. Additional District Judge while hearing the appeal under Section 96 of the (sic) enjoys adequate power to allow additional evidence if such evidence is required to enable him to pronounce the judgment. He can also allow the additional evidence for any other substantial cause advancing administration of justice. The judgment of the Rajasthan High Court in the case of Vishnu Iron and Steel Industries's case (supra) on which reliance has been placed has also concluded that the first appellate Court has adequate power to allow

additional evidence if such evidence is necessary to pronounce the judgment."

23. Hon'ble the Supreme Court in ***North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) by Lrs, 2008(3) RCR (Civil) 165***, laid certain broad principles while dealing with application for additional evidence. Relevant paragraphs thereof are extracted below:

"14. Again in K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 Supreme Court 1526 a Constitution Bench of this Court while reiterating the afore-noted observations in Parsotim's case (supra), pointed out that the appellate court has the power to allow additional evidence not only if it requires such evidence 'to enable it to pronounce judgment' but also for 'any other substantial cause'. There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence 'to enable it to pronounce judgment', it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Thus, the question whether looking into the documents, sought to be filed as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits.

*15. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil & Ors., AIR 1957 Supreme Court 363*** which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real*

*questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. (Also see: **Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar**, 1990(1) RCR (Rent) 229 : 1990(1) RRR 222 : 1990 Civ. C.C. 277 (SC).*

16. These are the broad principles to be kept in view while dealing with applications under Order 41 Rule 27 and Order 6 Rule 17 CPC.

17. It is manifest that in the present case, the High Court did not examine the record of the case with the thoroughness which was expected at the time of disposal of the pending applications. On a perusal of the impugned decisions, it is clear that the High Court was not even aware of the pendency of the application under Order 41 Rule 27 CPC seeking leave to adduce additional evidence. A perusal of the documents, which came to light pursuant to the directions given by the High Court on 3rd April, 2002, prima facie, goes to show that these are likely to widely affect the decision of the Court in one way or the other. If the stand of the appellant, which, according to them, is borne out from the documents now on record, is found to be correct, then obviously these will have material bearing on the core issue, namely, whether the decree dated 13th March, 2001 is a nullity, having been allegedly obtained by concealing material facts and playing fraud on the Court. It is trite that a judgment or decree by the first court or by the highest court-obtained by playing fraud on the Court is a nullity and non est in the eyes of law. (See S.P. Chengalvaraya Naidu v. Jagannath, 1994(1) RRR 253; AIR 1994 Supreme Court 853, Indian Household and Healthcare Ltd. v. LG Household and Healthcare Ltd., 2007(2) RCR (Civil) 362: 2007(2) RAJ 351: 2007(5) SCC 510). In any event, had the Court found the additional documents, sought to be admitted, necessary to pronounce the judgment in the appeal, in a more

satisfactory manner, it would have allowed the application and, if not, the application would have been dismissed. Nonetheless, it was bound to consider the application before taking up the appeal. We say no more at this stage, as the aforementioned applications are yet to be considered by the High Court on merits in the light of the legal position, briefly set out hereinabove. In view of the afore-noted factual scenario, we are of the opinion that the impugned judgment and the orders are erroneous and cannot be sustained."

24. The death certificate of Bakhat Ram and Munshi Ram, marginal witnesses to the alleged wills, are official documents, whose authenticity is not in dispute. Furthermore, Appellate Court while allowing the application determined that proposed evidence would enable the Court in taking effective and comprehensive decision regarding the fact at issues outlined in additional issue framed by the trial Court. To the considered opinion of this Court, such evidence should not be disallowed to be taken on record. Moreover, it is settled that a party should not be penalized due to any lapse, whether caused by inadvertence or inexperience of the counsel of the party. Reference in this regard can be made to **‘Joginder Singh Vs. Shangara Singh and others’, 2020(1) R.C.R.(Civil) 364.**

25. In view of the aforesaid discussion, there seems no illegality in the eyes of the law with respect to the impugned order. Accordingly, revision being devoid of merits stands dismissed.

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

(RITU TAGORE)
JUDGE

19.01.2024
Rimpal

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