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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

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Date of Decision : 22.02.2024

Raj Kumar (since deceased) through his L.Rs.

...Appellants

Versus

Krishna Devi (deceased) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Inderjit Singh Luthra, Advocate for the appellants.

Harsimran Singh Sethi J. (Oral)

CM-5140-C-2023 and CM-8998-C-2023

Present applications have been filed for withdrawal of the oral statement dated 28.02.2023 as well as for recalling the order dated 28.02.2023.

Though, the said order dated 28.02.2023 was passed in the presence of the counsel for the appellants but as the appellants are not satisfied with the order and intend to argue the appeal on merits, this Court recalls the order dated 28.02.2023 and restore the appeal to its original number and status and thereby allow the said applications.

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CM-5466-C-2023

Present application has been filed to amend the memorandum of appeal.

Keeping in view the facts mentioned in the application, which are duly supported by an affidavit, application is allowed. The amended memorandum of appeal is taken on record.

CM-5467-C-2023

The present application has been filed under Order 41 Rule 27 read with Section 107 of the CPC for leading additional evidence in view of the facts and circumstances of the present case.

By this application, the legal heirs of the applicant-appellant-Raj Kumar (since deceased) intend to bring on record the Mutation No. 15271, which has been recorded by the Revenue Authorities deleting the name of the appellant-plaintiff from the mutation record.

Learned counsel for the appellants submits that non-bringing on record of the said mutation was totally inadvertent hence, the application for producing the additional evidence on record be allowed.

It may be noticed that the applicant-appellant in fact has challenged the said mutation in the civil suit wherein a declaration for declaring the same as null and void was sought. The said mutation was to the knowledge of the applicant-appellant right from the day when the suit was filed. Once, challenge was raised to a particular document, it cannot be said that the said

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document was not in the knowledge of the applicant-appellant for him to bring the same on record before the trial court.

Further, the knowledge of the said document is not being denied by the applicant-appellant but it is being mentioned that inadvertently, the same could not be brought on record. It may be noticed that the claim of the applicant-appellant with regard to the said declaration was rejected by the trial court on the very ground of not having produced the said document on record qua which declaration was sought and the same was also not brought on record even before the lower appellate court, which has also rejected the appeal filed before it by recording the same finding. It is a settled principle of law that no document can be brought on record by way of additional evidence only to fill up gaps and lacunae in the evidence.

In the present case, by this application the applicant-appellant attempts to fill the gaps and lacunae in evidence in regards to not bringing on record the very document, against which declaration was sought merely on the ground that the same was on account of an inadvertent mistake, the said reasoning does not fulfill the position of law as per Order 41 Rule 27 of CPC, which is required to be satisfied so as to take on record additional evidence at the appellate stage and, therefore, the same cannot be permitted. The settled principle of law as observed by the Hon'ble Supreme Court in Civil Appeal No. 14055 of 2015 titled as *Andisamy Chettiar Vs. Subburaj Chettiar*, decided on 08.12.2015 is reproduced hereunder :-

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“11. Under the scheme of Code of Civil Procedure, 1908 (for short "the Code") whether oral or documentary, it is the trial court before whom parties are required to adduce their evidence. But in three exceptional circumstances additional evidence can be adduced before the appellate court, as provided under Section 107(1)(d) read with Rule 27 Order 41 of the Code. Rule 27 Order 41 reads as under :-

*"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) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission." (emphasis supplied)

12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate

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court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ex.A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition, i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.”

Learned counsel for the applicant-appellant by placing reliance upon the judgment of this Court in SAO No. 8 of 2013 titled as ***Shavitiri and others Vs. Ram Niwas and others***, decided on 04.09.2015, submits that keeping in view the findings recorded in paragraph 8 of the said judgment, the present application needs to be allowed.

The said contention cannot be accepted. In paragraph 8, the Co-ordinate Bench is only recording the powers of the Court. Not even a single line has been read in the said paragraph by the learned counsel for the applicant-appellant showing that gaps or lacunae in evidence can be filled up at the appellate stage. It is only where despite due diligence, certain documents could not be produced, the power has been given to the Court to summon the record whereas, in the present case, the applicant-appellant has not produced the document, which was subject matter of challenge itself before the trial court and which is now being sought to be placed on record through the instant

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application. The reliance being placed by the learned counsel for the applicant-appellant on the judgment is totally misplaced and cannot be accepted.

Keeping in view the above, no ground is made out for the grant of prayer as raised in the present application to lead the additional evidence and the same is accordingly dismissed.

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1. The present regular second appeal has been filed against the concurrent findings recorded by the courts below by which the suit filed by the appellant-plaintiff, Raj Kumar (since deceased) has been dismissed.

2. It may be noticed that the applicant-appellant, Raj Kumar had filed a civil suit challenging the Mutation No. 15271 by which, the name of the appellant-plaintiff, Raj Kumar was removed from the revenue record qua the land concerning the said mutation.

3. It was further prayed in the said suit by the appellant-plaintiff, Raj Kumar that the respondents-defendants be restrained from alienating/ mortgaging the suit property and from dispossessing the appellant-plaintiff from the same and for restraining them from interfering in appellant-plaintiff's peaceful possession of the suit property.

4. Learned counsel for the appellant-plaintiff argues that mutation cannot be treated as a document of ownership hence, the change of revenue record vide Mutation No. 15271 is arbitrary and illegal. It may be noticed that though, the mutation has been challenged by the appellant-plaintiff but the

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same was never brought on record either before the trial court or even before the lower appellate court. The said fact has been conceded by the learned counsel for the appellant-plaintiff during the hearing. Once, the document, which was to the knowledge of the appellant-plaintiff and was being challenged on the ground that the same is void, it was the duty of the appellant-plaintiff to bring on record the said mutation. As, mutation has not been brought on record, the question of examining the validity of the same has rightly been declined by the courts below so as to grant the relief to the appellant-plaintiff. Nothing has been shown to this Court that the findings recorded by the courts below qua the mutation No. 15271 is perverse on account of any fact/evidence proved on record.

5. Learned counsel for the appellant-plaintiff further submits that the appellant-plaintiff-Raj Kumar also sought injunction for restraining the respondents-defendants from alienating/mortgaging or dispossessing appellant-plaintiff from the suit property and from raising any construction thereupon qua the said contention. It may be noticed that the appellant-plaintiff was required to produce evidence showing that he was rightful owner in possession of the property in question. The appellant-plaintiff conceded the fact that the original sale deed on the basis of which the appellant-plaintiff was seeking ownership of the suit property as specified in said mutation was never produced and the said contention has been raised on the basis of this fact that the son of the appellant-plaintiff has claimed to have seen the said sale deed in possession of the appellant-plaintiff-Raj Kumar before he died once it is a conceded fact that the

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original sale deed was never produced on record, relief cannot be granted on a mere statement that son of the appellant-plaintiff had seen the said document. Till a particular document is brought on record in accordance with law, same cannot be appreciated by the Courts to grant the relief.

6. As per the appellant-plaintiff, the sale deed on the basis of which the ownership right was being claimed, was executed between the appellant-plaintiff-Raj Kumar and Hukam Chand, Laxmi Narain as parties to the same. To prove the said sale deed testimony of a marginal witness i.e. prosecution witness No. 10 is relied upon, who has stated in the same that although, a sale deed was executed between the said parties, however, when it came to the knowledge of the appellant-plaintiff that the subject property of the sale deed did not belong to the vendors i.e. Hukam Chand and Laxmi Narain, the sale consideration was taken back by the appellant-plaintiff-Raj Kumar the vendee and an endorsement/note was made at the back of the said sale deed stating the same as having been cancelled.

7. In light of the said testimony of PW-10, which goes against the claim regarding ownership of the suit property being that of the appellant-plaintiff having gained the same from Hukam Chand and Laxmi Narain, which testimony has also been relied upon by the courts below, no interference is called for by this Court on the finding recorded by the courts below.

8. Learned counsel for the appellant-plaintiff submits that the part of testimony of PW-10, which goes contrary to the stand of appellant-plaintiff i.e. with regard to the ownership of the suit property of vendors i.e. Hukam Chand

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and Laxmi Narain, should have been tested on the basis of evidence on record by the courts below before discrediting the same as evidence of appellant-plaintiff's ownership of the suit property.

9. Learned counsel for the appellant-plaintiff has claimed that as per an allotment letter in favour of Hukam Chand and Laxmi Narain pertaining to the suit property issued by authorities, it cannot be said that the vendors to the said sale deed were not the rightful owners of the suit property. In regard to the said argument, the learned trial court in its finding has recorded that the said allotment letter, which is stated to be in favour of Hukam Chand and Laxmi Narain was never brought on record or summoned from the authorities so as to show that Hukam Chand and Laxmi Narain was the rightful owners of the suit property before the execution of the said sale deed. It has been further noted in the findings of the learned trial court that though, the suit property was claimed by the appellant-plaintiff to have been allotted to said Hukam Chand and Laxmi Narain by the Rehabilitation Department, however, the witness appearing on behalf of the Rehabilitation Department was not cross-examined with effect to any such allotment having been made in favour of Hukam Chand and Laxmi Narain. In the absence of any evidence that vendee of the appellant-plaintiff had a valid letter qua the suit property, appellant-plaintiff cannot claim ownership and finding recorded by the courts below needs no interference by this Court.

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10. Learned counsel for the appellant-plaintiff has further submitted that by way of secondary evidence, the said sale deed was brought on record subject to all just exceptions.

11. The onus was upon the appellant-plaintiff to prove the said secondary evidence on record, which he failed in view of the facts and arguments noticed here-in-before. The appellant-plaintiff has failed to prove on record the veracity of the sale deed produced in the form of secondary evidence. It may be noticed here that the appellant-plaintiff in order to prove his claim qua sale deed also did not summon the vendors Hukam Chand and Laxmi Narain as witness nor produced any document other than the sale deed in shape of secondary evidence to prove the title of his vendors qua the property in question. Further, the entries in the jamabandi also did not support the claim of the appellant-plaintiff with regard to Hukam Chand and Laxmi Narain being the owners of the suit property and the appellant-plaintiff has failed to show how the ownership of the suit property vested with Hukam Chand and Laxmi Narain through whom he claims to have gained ownership of the suit property.

12. Learned counsel for the appellant-plaintiff has further submitted that the entry in mutation No. 15271 has wrongly been recorded, which is contrary to Section 45 of Punjab Land Revenue Act, 1887. It may be noticed that the veracity of mutation No. 15271 can only be looked into in case, the same was brought on record for perusal of the court so as to decide the same. In the absence of said mutation being brought on record, the question of application of Section 45 does not arise in the facts and circumstances of the

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present case. Hence, the reliance being placed by the learned counsel for the appellants-plaintiffs on the judgment of the Division Bench of this Court in CWP No. 5759 of 2003 titled as *Tarlok Singh Vs. Financial Commissioner Co-operation, Punjab, Chandigarh and others*, decided on 25.05.2004 is totally misplaced and cannot be accepted.

13. Even otherwise, it is a conceded position before this Court that the sale deed relied upon by the appellant-plaintiff does not describe the property by boundaries so as to show as to which part of land was sold to the appellant-plaintiff. It is a conceded position that khasra no. 603 comprises of land which has a total area which is much bigger than just 08 marlas which as per the said sale deed has been sold by Hukam Chand and Laxmi Narain to the appellant-plaintiff. In light of the said factual position, once the sale deed does not specify the boundaries of its subject land and also the fact that the appellant-plaintiff did not produce on record any site plan of the suit property showing any construction raised as was claimed, it cannot be said that the appellant-plaintiff was in possession of the suit property for the grant of claim made by him in the civil suit before the trial court.

14. Learned counsel for the appellants-plaintiffs argues that once a sale deed was registered between the appellant-plaintiff-Raj Kumar, Hukam Chand and Laxmi Narain, the same is to be treated as valid to confer title of the suit property. It may be noticed that the witness, which has been produced by the appellant-plaintiff i.e. PW-10 Tek Chand, who was the witness to the said sale deed, stated before the Court that the said sale deed was cancelled by

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writing by both the parties and the transaction amount was also returned to the appellant-plaintiff and the endorsement was made to the said effect at the back of the registered sale deed itself and that is why, the said sale deed was given back to the so called owners of the property. Further, the testimony of Tek Chand has never been rebutted by the appellant-plaintiff in any manner. The mere sale deed between the parties, which is conceded to be based only on a mutation entered in favour of Hukam Chand and Laxmi Narain, cannot give any right to the appellant-plaintiff as the ownership of Hukam Chand and Laxmi Narain has also not been proved so as to claim a valid title on the basis of the sale deed in favour of the appellant-plaintiff.

15. The assertion of learned counsel for the appellants-plaintiffs that khasra No. 603 was mentioned and the total area purchased as 08 marla was also mentioned in the sale deed, is good enough to describe the property. Learned counsel for the appellants-plaintiffs conceded that total area of khasra No. 603 is much more than 08 marla.

16. Once, the boundaries of 08 marla land have not been defined, it cannot be said that 08 marla which the appellant-plaintiff is claiming to be in possession, is the suit property so as to claim valid possession of the suit property.

17. Further, as per the settled principle of law in regular second appeal, this Court is not required to re-appreciate the evidence on record so as to record a finding contrary to the courts below and the mandate of this Court at the stage of regular second appeal is only to appreciate the appeal on the

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touchstone of wrong application of law by the courts below while appreciating the evidence on record and no such infirmity in application of law has been pointed out by the learned counsel for the appellant-plaintiff.

- 18. No other argument has been raised.
- 19. In view of the above, no ground is made out for any interference by this Court in the findings of the courts below.
- 20. Dismissed.

Any miscellaneous application, if pending, stands disposed of.

February 22nd, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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