



CR-96-2019

-1-

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

(108-2)

CR-96-2019

Date of decision:- 28.01.2025

Reema and others

... Petitioners

Versus

Deep Rattan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kashish Garg, Advocate
for the petitioners.

Mr. Jagjit Singh Gill, Advocate
for respondents No.1 and 2.

None for respondent No.3.

SUVIR SEHGAL, J. (ORAL)

1. Instant revision petition has been filed under Article 227 of the Constitution of India impugning order dated 07.12.2018, Annexure P-8, passed by the learned Civil Judge (Junior Division), Bathinda, whereby an application dated 08.10.2018, Annexure P-6, filed by the plaintiffs-respondents No.1 and 2 for permission to lead additional evidence, has been accepted.

2. Counsel for the petitioners states that plaintiffs filed a suit for declaration to the effect that they are owners in possession of 2/3rd share of the suit property on the basis of a WILL dated 28.03.2006 and for declaration to the effect that mutation dated 14.06.2010 regarding inheritance of Shanti Devi sanctioned on the basis of alleged WILL dated 16.08.1996 is a result of fraud. Upon notice, petitioners and respondent

**CR-96-2019****-2-**

No.3, who were impleaded as defendants, filed a joint written statement contesting the suit and on the basis of the pleading of the parties, issues were framed on 11.07.2013, Annexure P-1. Counsel submits that after availing numerous opportunities, when the plaintiffs-respondents No.1 and 2 could not conclude their evidence, Trial Court by order dated 02.01.2018, Annexure P-3, closed their evidence. It is his assertion that after the defendants concluded their evidence, the plaintiffs filed an application, Annexure P-6, seeking permission for production of some documents as additional evidence, which has been accepted by the Trial Court vide order impugned herein. It is his argument that after the evidence of the plaintiffs was closed by an order of the Trial Court, they cannot be permitted to adduce additional evidence, moreso, when the suit was at the stage of arguments.

3. Counsel for plaintiffs-respondents No.1 and 2 on the other hand has supported the impugned order and urges that the evidence sought to be produced is material for the decision of the civil suit on merits.

4. I have heard counsel for the parties and considered their respective submissions.

5. Plaintiff-respondents No.1 and 2 filed the suit before the Trial Court, which is pending since the year 2013. Despite grant of repeated opportunities, they did not conclude their evidence and the Trial Court by order, Annexure P-3, closed their evidence. Defendants concluded their evidence on 30.07.2018 and during the course of arguments, an application, Annexure P-6, has been filed by the plaintiffs for permission to lead



CR-96-2019

-3-

additional evidence on the ground that due to inadvertence, accidental omission and over sight, they could not produce the certified copies of mutation and exhibit the *Jamabandis*, though they are already on the record. The explanation given in the application is extremely vague. It is the settled position of law that an application for additional evidence under Order 18 Rule 17, CPC is not to be allowed in normal routine. In **Vadiraj Naggappa Vernekar (dead) through LRs Versus Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410**, Supreme Court has observed as under:-

“25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.”

XXXX

XXXX

XXXX

“28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”

XXXX

XXXX

XXXX

“31. Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the court's discretion,



CR-96-2019

-4-

if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

6. When examined in the light of the observations made by the Supreme Court, it is evident that the plaintiffs-respondents No.1 and 2 have not been able to make out a case for production of additional evidence. The said respondents have been lax in the production of the evidence and at the stage of the arguments, they are trying to filling in the lacuna, which cannot be permitted. There is nothing to show that the additional evidence sought to be produced would enable the Court to clarify any doubt. Moreover, as the plaintiff's evidence has been closed by an order of the Court, which has become final, plaintiff cannot be permitted to produce the same evidence by way of additional evidence as it would tantamount to circumventing the order of the Court. Impugner order, therefore, suffers from material irregularity and illegality and it cannot be sustained.

7. Accordingly, revision petition is allowed. Impugned order, Annexure P-6, is set aside.

28.01.2025
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No