

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213

CR-6250-2018

Date of Decision: 06.05.2025

Santokh Singh

....Petitioner

Versus

Tarsem Singh and others

....Respondents

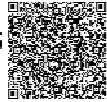
CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Rishabh Gupta, Advocate for the petitioner.

NIDHI GUPTA, J.

1. The present Civil Revision Petition has been filed by the plaintiff under Article 227 of the Constitution of India, for setting aside order dated 19.07.2018 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Hoshiarpur, whereby the application dated NIL (Annexure P-3) filed by respondent No. 1/defendant for leading additional evidence in Civil Suit No. 936 of 2014, titled as 'Santokh Singh vs. Tarsem& others', was **allowed**.

2. At the very outset, it may be pointed out that notice in the present case was issued by a co-ordinate Bench vide order dated 17.09.2018 and learned trial Court was directed '*to adjourn the case beyond the date given by this Court*'. Respondents No. 1, 3 and 10 had first put in appearance on 30.01.2020. On said date, upon the statement of learned counsel for the petitioner service of the remaining respondents was dispensed with at that stage, as they had been proceeded *ex-parte* before the Courts below. Further, perusal of order-sheets reveals that after 30.01.2020, the case has been listed for hearing several times, none has



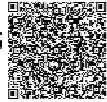
appeared on behalf of respondents No. 1, 3 and 10. As such, the present matter is being heard and decided in their absence.

3. It is, *inter alia*, submitted by the counsel for the petitioner that the application for additional evidence (Annexure P-3) has been filed by the defendant No. 1-Tarsem Singh/respondent No. 1 only with a view to delay the trial. The application has been filed when trial was at fag end and matter was fixed for rebuttal and final arguments. Thus, the application could not have been allowed at this belated stage. Moreover, the respondents are the beneficiaries of the *Tabdil Malkiatnamas*, therefore, the same were in their possession since the year 2011. In fact, it has been admitted by the defendants themselves that the additional evidence now sought to be produced by them was in their knowledge prior thereto. Even the additional evidence sought to be produced has no relation to the issues in hand. It is accordingly, prayed that the present Civil Revision be allowed and the impugned order be set aside.

4. No other argument has been raised by learned counsel for the petitioner.

5. I have heard learned counsel and perused the case file in great detail.

6. Brief facts are that the petitioner had filed Civil Suit No. 936 of 2014 dated 18.06.2014/23.09.2014 (online) (Annexure P-1) seeking declaration that the plaintiff and defendants No. 1 and 2 are owners in possession and joint possession of the suit land measuring 55 Kanals 18 marlas as fully detailed in the head note of the plaint. From the pleadings of the parties, following issues were framed by the learned trial Court vide order dated 08.09.2015:-



- “1) Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
- 2) Whether the plaintiff has not come to the court with clean hands and they have suppressed the real facts from this court? OPD
- 3) Whether the plaintiff is stopped from filing the present suit by their own act and conduct? OPD
- 4) Whether the suit is barred by limitation? OPD
- 5) Relief.”

7. Defendant No. 1/ respondent No. 1 herein, had led his evidence and closed the same in affirmative. Thereafter, the matter was fixed for rebuttal evidence, if any, and arguments. It is at this stage that defendant No. 1 filed the present application dated 23.02.2018 (Annexure P-3) for leading additional evidence to examine concerned Clerk of Tehsildar Office Hoshiarpur along with record of both registered *Tabdil Malkiatnama* dated 03.8.2001 and 20.1.2011; and to examine its marginal witnesses Gurbax Singh Lamberdar Village Attoawal and Joga Singh R/o village Attowal to reveal the truth of the both registered *Tabdil Malikatnama* dated 03.8.2001 and 20.1.2011.

8. Perusal of the said application (Annexure P-3) reveals that it has been pleaded therein that previous counsel of defendant has not proved both registered *Tabdil Malkiatnama* dated 03.08.2001 and 20.01.2011 for the reason best known to him. It has been averred that the defendant did not know the technicalities of law and now when he engaged his new counsel, then only at this stage with his legal advice, he came to know that the said both *Tabdil Malkiatnamas* has to be proved on record of file by leading necessary evidence as noticed above.

9. First and foremost, lack of legal knowledge constitutes no ground for permitting additional evidence when trial is at stage of rebuttal evidence and arguments. Moreover, the documents now sought to be



produced by the respondent pertain to the years 2001 and 2011. It is the own case of the respondent that the said *Tabdil Malkiatnamas* dated 03.08.2001 and 20.01.2011 were given to the previous counsel. Thus, defendants were in knowledge of the said documents, however, have chosen not to produce the same in affirmative evidence. Clearly, the present application has been filed by the respondent only to fill the lacunae in their defence which cannot be permitted. Even nothing is stated in the application (Annexure P-3) in respect of the relevance of the additional evidence to any of the issues framed by the 1d trial Court vide order dated 08.09.2015, reproduced above.

10. I find support from the judgment of the Hon'ble Supreme Court in ***Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai vs. Gupta Building Material Store, 303(3) RCR (Civil) 304, Law Finder Doc Id # 415420*** and para-No. 12 thereof reads as under: -

“12. After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the



plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Code of Civil Procedure.”

11. A co-ordinate Bench of this Court in ***Civil Revision No. 5113 of 2015 decided on 14.02.2023*** titled as ***‘Sukhwinder Singh vs. Dev Singh***, has held as under:-

“In the present case, the bonafides on the part of the plaintiff-petitioner are questionable in as much as all the documents were well within the knowledge of the plaintiff-petitioner. He chose not to produce them in the affirmative. The Supreme Court in the case of K.K. Velusamy (supra) has held that if the Court is satisfied that the non-production earlier was for valid or sufficient reasons, production of additional evidence may be allowed. However, in the present case no valid or cogent reasons are coming forth for not producing the documents earlier. There is no quarrel with the proposition of law as laid down in the judgments referred to by the counsel for the plaintiff-petitioner. However, the facts of each case need to be dealt with. In the present case, the bonafides of the plaintiff-petitioner are totally wanting”

12. In view of the above, the instant revision petition is **allowed**; and the impugned order dated 19.07.2018 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Hoshiarpur, allowing the application (Annexure P-3) for leading additional evidence filed by defendant/respondent No. 1, is **set aside**.

13. Pending applications, if any, stand disposed of.

06.05.2025
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No