



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

134

CR-2973-2025 (O&M)

Date of Decision : 15.05.2025

RAJENDER KUMAR

... Petitioner

VERSUS

AMAR SINGH (DECEASED) THR LRS AND ORS

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Vijarania, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 28.04.2025 (Annexure P-5) passed by the learned Additional Civil Judge (Senior Division), Charkhi Dadri whereby the application filed by plaintiff No.1-petitioner for leading additional evidence was dismissed.

2. Brief facts relevant to the present *lis* are that plaintiff No.1-petitioner herein filed a suit for declaration to the effect that the plaintiffs are the owners in possession of 24 Marlas of land as fully described in the plaint as also for permanent injunction restraining the defendants from interfering in their right, title or interest. Written statement was filed. On the basis of the pleadings of the parties, the following issues were framed :

- 1) Whether the plaintiffs are entitled to the decree of declaration, as prayed for ? OPP

- 2) Whether the plaintiffs are entitled to the decree of injunction, as prayed for ? OPP
- 3) Whether the suit of plaintiffs is not maintainable in its present form ? OPD
- 4) Whether the plaintiffs have no *locus standi* and cause of action to file and maintain the present suit ? OPD
- 5) Whether the plaintiffs have not come to the Court with clean hands and have concealed the true and material facts from the Court ? OPD
- 6) Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
- 7) Whether the plaintiffs are estopped by their own act and conduct from filing the present suit ? OPD
- 8) Whether the present suit is barred by law of limitation ? OPD
- 9) Whether the present suit is false and frivolous and defendants are entitled to special costs ? OPD
- 10) Relief.

After the evidence had been concluded, an application was filed by plaintiff No.1-petitioner seeking permission to tender in evidence as many as 11 documents. The only reason stated in the application was that the documents were important and that the counsel came to know while preparing the case that these documents were necessary. Vide the impugned

order the application for additional evidence was dismissed. Hence, the present revision petition by plaintiff No.1-petitioner.

3. Learned counsel for the plaintiff No.1-petitioner would contend that the evidence now sought to be led is necessary to prove the case and hence the application for additional evidence ought to have been allowed.

4. Heard.

5. In the present case the only reason given in the application for leading additional evidence is that it came to the notice of the counsel while preparing the case for arguments that the documents would be necessary to decide the case. The suit is for declaration to the effect that the plaintiffs are exclusive owners in possession of the land as stated in the headnote of the plaint and that mutations No.3942 and 5214 were wrong, illegal, null and void and not binding on the rights of the plaintiffs and are liable to be set aside as also all subsequent entries in the revenue record on the basis of the said mutations have been challenged.

6. Learned counsel for the plaintiff No.1-petitioner has contended that the said documents are necessary to further the case of the plaintiffs that they are entitled to the declaration. It is trite that an application for additional evidence cannot be used to fill in *lacunae* at the time of final arguments.

7. The Hon'ble Supreme Court in case of **K.K. Velusamy vs. N. Palanisamy [2011 (2) RCR (Civil) 875 (SC)]** has held as under :

“16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so

used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence

earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

Further, the Hon’ble Supreme Court in case of **M/s Bagai Construction vs. M/s Gupta Building Material Store [2013(3) RCR (Civil) 304]** has held as under :

“11. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to

fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Civil Procedure Code, the plaintiff cannot be permitted.

12. After change of various provisions by way of amendment in the Civil Procedure Code, 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 Civil Procedure Code.”

8. Learned counsel for plaintiff No.1-petitioner has not been able to convince this Court that there is any valid or sufficient reason for production of the additional evidence. No valid or cogent reason is forthcoming from the application, nor any cogent or valid reason has been explained by the counsel as to why the said documents are necessary. In view thereof, no fault can be found with the impugned order.

9. In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

10. Any observation made herein shall not be treated as an expression of opinion on the merits of the case.

15.05.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No