2025:PHHC:041721

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

145+273 **CR-1418-2020 (O&M)**
Date of Decision : 26.03.2025

AJAIB SINGH .... Petitioner

VERSUS

GURMEET SINGH AND ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naresh Jain, Advocate for the petitioner.

None for the respondents despite service.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 30.01.2020 (Annexure P-5) passed by the learned Additional Civil Judge (Senior Division), Mansa whereby the application filed by the plaintiff-petitioner for leading additional evidence was dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for specific performance of an agreement dated 30.12.2005 stated to have been entered into by defendant-respondent No.1 who in turn had an agreement to sell in his favour dated 22.12.1989. The edifice of the entire suit are the two agreements to sell dated 22.12.1989 and 30.12.2005. The suit was filed on 02.01.2018 and on 09.10.2018 the following issued were framed by the Trial Court :

> 1. Whether Ajmer Singh, Tara Singh, Bachattar Singh, Pritam Singh, Gurmit Singh and Mithu Singh had entered into agreement dated 22.12.1989 with defendant

AMAN JAIN
2025.03.28 10:26
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No.1 to sell their share in the property to defendant No.1 ? OPP

2. If the answer to issue No.1 is in affirmative, whether defendants Nos.2 to 15 are bound to convey rights to defendant No.1 or his agent in the property inherited by them ? OPP

3. Whether defendant No.1 executed agreement in favour of plaintiff on 30.12.2005 ? OPP

4. Whether the plaintiff is ready and willing to perform his part of agreement dated 30.12.2005 ? OPP

5. Whether the suit is within the period of limitation ? OPP

6. Whether the writings dated 22.12.1989 and 30.12.2005 are forged and fabricated document ? OPD

7. Whether the suit is barred by the law of constructive *res judicata* and under Order 2 Rule 2 CPC ? OPD

8. Whether the plaintiff is in possession of the suit property ? OPP

9. Whether the plaintiff is entitled to the relief of specific performance of the agreements dated 22.12.1989 and 30.12.2005 ? OPP

10. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP

AMAN JAIN
2025.03.28 10:26
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11. Whether the plaintiff has no cause of action or *locus standi* to file the present suit ? OPD

12. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD

13. Whether the suit of the plaintiff is bad for non-joinder of necessary parties i.e. legal heirs of alleged executants of writing dated 22.12.1989 ? OPD

14. Whether the documents dated 22.12.1989 and 30.12.2005 are inadmissible in evidence, being improperly stamped and being unregistered documents ? OPD

15. Relief.

Thereafter the plaintiff-petitioner availed 14 opportunities and closed his evidence on 28.08.2019. The defendant-respondents closed their evidence on 03.10.2019 and the case was fixed for rebuttal evidence of the plaintiff-petitioner when the present application was filed on 24.10.2019. In the application it was stated that the original of the agreement dated 22.12.1989 had now been found and the plaintiff-petitioner sought to lead the same by way of additional evidence. Reply was filed to the said application. Vide the impugned order dated 30.01.2020 the application was dismissed. Hence, the present revision petition by the plaintiff-petitioner.

3. Learned counsel for the plaintiff-petitioner would contend that initially a photocopy was produced and the original was given to the counsel who misplaced the same. Later when it was found, the plaintiff-petitioner

AMAN JAIN
2025.03.28 10:26
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sought to lead the same as additional evidence and hence the application for leading additional evidence ought to have been allowed. In support of his arguments, learned counsel for the plaintiff-petitioner has relied upon the judgments passed by the Hon'ble Supreme Court in the case of **Salem Advocate Bar Association V/s Union of India [2005 (3) RCR (Civil) 530]** and **K.K. Velusamy V/s N. Palanisamy [2011 (2) RCR (Civil) 875]**. Further reliance is also placed upon the judgments of this Court in the cases of **Monika Saini V/s Mukhtiar Chand & Anr. [2019 (1) Law Herald 776]**, **Mahant Balbir Dass V/s Shiromani Gurudwara Prabandhak Committee & Anr. [2019 (2) PLR 807]** and **Rambhateri V/s Lali Devi & Anr. [2018 (1) Law Herald 312]**.

4. Heard.

5. In the present case the very basis of the suit are the two agreements to sell dated 22.12.1989 and 30.12.2005. It has been averred in the plaint that on 22.12.1989 Ajmer Singh, Tara Singh, Pritam Singh, Jagtar Singh, Baldev Singh, Gurmit Singh and Mithu Singh executed an agreement to sell in favour of defendant-respondent No.1 - Gurmeet Singh - and they received the entire sale consideration of ₹18,290 from Gurmeet Singh. Thereafter, on the basis of the agreement to sell in his favour dated 22.12.1989, Gurmeet Singh entered into an agreement to sell dated 30.12.2005 with the present plaintiff-petitioner. The entire case revolves around the agreement to sell dated 30.12.2005 in favour of the plaintiff-petitioner and the agreement to sell dated 22.12.1989 in favour of defendant-respondent No.1. Infact, a specific issue being issue No.1 was framed qua

AMAN JAIN
2025.03.28 10:26
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the agreement dated 22.12.1989 the onus of which was on the plaintiff-petitioner. That being so it was incumbent on the plaintiff-petitioner to have led his evidence in the affirmative. In the application for leading additional evidence, it has simply been stated that the original had now been found and hence the necessity to file the application for leading additional evidence.

6. On a query by the Court as to whether in the absence of the original agreement to sell dated 22.12.1989, any application to prove the said document by way of secondary evidence was filed, the answer is in the negative. Had it been a case where the original was not available with the party, the party always had a right to prove the same by way of leading secondary evidence. However, no endeavor was made by the plaintiff-petitioner to prove the said document by leading secondary evidence. At the fag end of the trial, in order to fill in the *lacunae*, the present application was filed.

7. 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*

AMAN JAIN
2025.03.28 10:26
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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

AMAN JAIN
2025.03.28 10:26
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record, the court may also listen to the recording before granting or rejecting the application."

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

AMAN JAIN
2025.03.28 10:26
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"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,

AMAN JAIN
2025.03.28 10:26
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> *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. Further, the *bonafides* on the part of the plaintiff-petitioner are questionable in as much as the original agreement in question was well within his knowledge and he chose not to produce the same in his affirmative evidence. Though the Supreme Court in the case of **K.K. Velusamy (supra)** has held that if the Court is satisfied that the non-

AMAN JAIN
2025.03.28 10:26
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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 said document earlier. There is no quarrel with the proposition of law laid down in the judgments relied upon by learned counsel for plaintiff-petitioner in **Salem Advocate Bar Association (supra)**, **Monika Saini (supra), Mahant Balbir Dass (supra) and Rambhateri (supra)** however the facts of the same are distinguishable and as stated above the plaintiff-petitioner could not prove his due diligence in production of the said agreement to sell in the affirmative and now in the fag end of the suit he cannot be permitted to fill in the *lacunae*.

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.

26.03.2025 **(ALKA SARIN)**
Aman Jain **JUDGE**

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

AMAN JAIN
2025.03.28 10:26
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