

“after Hearing Both the Counsel for the Vs. Raj Kumar

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Court : Punjab and Haryana

Decided On : Dec-05-2012

Appellant : “after Hearing Both the Counsel for the

Respondent : Raj Kumar

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Civil Revision 636 of 2012 Date of Decision : December 05, 2012 Sham LalPetitioner Versus Raj KumarRespondent CORAM : HON'BLE Mr.JUSTICE T.P.S.MANN Present : Mr.Sanjay Verma, Advocate Mr.Sourav Garg, Advocate T.P.S.MANN, J.

The plaintiff has filed the present revision under Article 227 of the Constitution of India for challenging the order passed by the trial Court whereby application filed by him for leading additional evidence was dismissed.

In the suit filed by him, the plaintiff has sought relief of injunction against the respondent in respect of a Chaubara with staircase constructed on two shops bearing MC No.154, Ward No.2, Pehowa of which he claims himself to be owner and in possession.

It is averred therein that initially, the defendant had filed Civil Suit No.237 of 1998 in respect of the two shops beneath the suit property which was decreed on 8.12.2005 and sale-deed in respect of those shops executed in his favour on CR

63.of 2012 -2- 23.5.2006.

On 9.12.2006, the plaintiff filed Civil Suit No.542 of 2006 (here-in-after referred to as the previous suit.) seeking injunction against the defendant in respect of the suit property, i.e.a Chaubara with staircase constructed over the two shops.

However, in the evening of 9.12.2006, taking undue benefit of manpower and political backing, the defendant took forcible possession of the suit property by removing the goods lying therein belonging to the plaintiff and, thereafter, demolished the entire suit property and the shops beneath the same.

That suit which was filed for injunction was dismissed as withdrawn on 15.12.2006.

The plaintiff then filed Civil Suit No.608 of 2011 on 21.12.2006 (here-in-after referred to as the present suit.) wherein he sought decree for mandatory injunction directing the defendant to restore the suit property to its original condition, i.e.by constructing a Chaubara and a staircase and in the event of the defendant failing to do the same, the plaintiff be allowed to carry out the construction of the Chaubara and staircase at the costs and risk of the defendant.

During the pendency of the present suit, the petitioner filed application dated 9.1.2012 (Annexure P/2) wherein he prayed that he be allowed to tender in evidence certified copy of the statement made by him as well as his counsel on 15.12.2006 and also the certified copy of the order dated 16.12.2006 passed in the previous suit which though was available with his counsel in the present suit, but could not be CR 63.of 2012 -3- tendered in evidence earlier.

He also could not tender copy of the plaint in the previous suit while leading evidence in the present suit and the factum of the filing of the previous suit was not denied by the defendant.

The trial Court after hearing counsel for the parties found no merit in the application filed by the petitioner for leading additional evidence on the ground that the additional evidence sought to be led by him was in his knowledge since the very beginning and the same could not be led subsequently by taking the plea that

it could not be tendered despite due diligence.

Moreover, the present suit was at the stage of rebuttal and arguments and in the event of the application being allowed, it would amount to reopening the trial of the case which pertained to the year of 2006 and included in the list of 100 oldest civil cases of the concerned Court.

The relevant para of the impugned order passed by the trial Court while stating the reasons for dismissing the application is re-produced here-in- below:- After hearing both the counsel for the parties and perusing the case file minutely, this Court is of the view that the application in hand is liable to be dismissed.

It is the case of the applicant/plaintiff that the certified copy of statement of plaintiff as well as counsel for the plaintiff dated CR 63.of 2012 -4- 15.12.2006 and certified copy of order dated 16.12.2006 in civil suit No.542/2006 were in the brief of the counsel for the plaintiff, but the said documents could not be tendered in evidence and so, could not be produced by the plaintiff in spite of due diligence.

It is further the case of applicant that above said documents are the part of judicial file and cannot be forged and their authenticity is not in dispute.

On the other hand, application in hand has been opposed on behalf of defendant by stating that the same is not maintainable in the eyes of law.

It is settled law that a party could lead additional evidence if the same could not be produced while his evidence in affirmative despite due diligence or the same was not in his knowledge.

However, in the opinion of this Court, the evidence sought to be led by way of additional evidence was in the knowledge of applicant/plaintiff since the very beginning and, therefore, the same cannot be led at this stage by stating that the same could not be tendered in spite of due diligence.

The mere statement of applicant/plaintiff is not sufficient to prove that the said documents could not be tendered despite due diligence.

The applicant/plaintiff could have very well produced the above mentioned documents sought to be produced at this stage at the time of leading his evidence.

Moreover, the present case is at the stage of rebuttal evidence, if any, and arguments and if the present application is allowed, it would amount to re- open the trial of the case, which pertains to year 2006 and is included in the list of 100 oldest civil CR 63.of 2012 -5- cases of this Court.

The case of the applicant/plaintiff is one of the cases of gross negligence on his part and, therefore, the application filed by him for additional evidence in rebuttal cannot be allowed at this stage particularly, when no case is made out for adducing the additional evidence in rebuttal on behalf of applicant/plaintiff.

It is not in dispute that while filing the written statement, the defendant had questioned the maintainability of the present suit.

Pursuant thereto the trial Court framed issue No.2 as to whether the suit of the plaintiff is not maintainable in the present form.

Onus of proof was placed upon the defendant.

Once the defendant led evidence in affirmative on issue No.2, the plaintiff was required to lead evidence in rebuttal so as to convince the Court about the maintainability of the suit filed by him.

It was at the stage of rebuttal and arguments that the plaintiff had filed the application for leading additional evidence.

Therefore, it cannot be said that the application for additional evidence had been moved at a later stage.

Counsel for the plaintiff has undertaken that apart from tendering certified copy of the statement of the plaintiff as well as his counsel made on 15.12.2006 and certified copy of the order dated 16.12.2006 passed in the previous suit as well as copy of the plaint of the previous suit, he will not lead any further CR 63.of 2012 - 6- evidence in rebuttal to the evidence led by the defendant on issue No.2.

Once the plaintiff tenders the aforementioned statement/order/plaint, the trial of the case would not get re- opened.

On the other hand, these documents would assist the trial Court in arriving at a just decision.

In view of the above, the revision is accepted, impugned order is set-aside and the application filed by the plaintiff-petitioner for leading additional evidence is allowed.

(T.P.S.MANN) December 05, 2012 JUDGE ajay-1

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