

(2011) 01 P&H CK 0442

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 7421 of 2010 (O and M)

Mohan Lal

APPELLANT

Vs

Bhim Sain and Another

RESPONDENT

Date of Decision: Jan. 19, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 17A, Order 21 Rule 97, Order 41 Rule 27, 151
- Constitution of India, 1950 - Article 227

Citation: (2011) 162 PLR 377**Hon'ble Judges:** Ram Chand Gupta, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Ram Chand Gupta, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 18.10.2010, passed by learned trial Court, vide which application filed by present Petitioner-Defendant No. 1 for leading additional evidence was ordered to be dismissed.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned trial Court.

3. Brief facts relevant for the decision of present revision petition are that there is dispute between the parties to the suit with regard to a passage situated in North side of shop of Petitioner-Defendant No. 1. The property of Respondent No. 2 and his mother Smt. Sewati Bai is situated in Northern and Eastern side of that disputed passage. Petitioner-Defendant No. 1 had purchased this shop in question from Chunni Lal by way of registered sale deed No. 557 dated 16.7.1976 while Respondent No. 2 and his mother had purchased the Northern Eastern side property from same Chunni Lal before the sale deed of Petitioner. The shop of

Petitioner is two sides open having two doors in Northern side opening in the disputed passage and one door in western opening on the main road. There is a recital in the sale-deed of Respondent No. 2 and his mother that the disputed passage in question is a thoroughfare meant for egress and ingress of the vendor.

4. The present Petitioner filed an execution petition before the Executing Court. In the meantime, Leela Dhar, Respondent No. 2 filed Civil Appeal No. 68 of 1997 before the District Judge, Narnaul. The Petitioner also filed cross-objections bearing No. 80 of 1997. Hon"ble District Judge, Narnaul, dismissed the appeal of proforma Defendant No. 2 and allowed the cross-objections of present Petitioner vide judgment and decree dated 4.10.2000. Leela Dhar -Respondent No. 2 filed Regular Second Appeal bearing No. 4044 of 2000 before this Court, which was dismissed on 8.11.2000. During pendency of this suit, local commissioner was also appointed, who had submitted its report.

5. Chiman Lal, father of Defendant No. 2 and Plaintiff also filed a suit No. 7 of 13.1.1998 against Defendant No. 1 in the civil court at Mohindergarh claiming himself as co-sharer in disputed passage.

6. During pendency of civil suit, Chiman Lal died and the Plaintiff and Defendant No. 2 were impleaded as his legal representatives in that suit before filing of the present suit. Meanwhile, Defendant No. 2 filed a civil suit No. 433 of 1993 against Municipal Committee, Mohindergarh and impleaded the Plaintiff and his father Chiman Lal as proforma Defendants. In the execution petition No. 28 of 2001, Mohan Lal filed a petition for execution of judgment and decree dated 22.8.1997 passed by the Court of learned Civil Judge, Junior Division, Mohindergarh, in civil suit No. 987 of 1990, which was upheld by learned District Judge, Narnaul in civil appeal No. 68 of 1997 and cross-objections No. 80 of 1997 were also decided on 4.10.2010 and further affirmed by this Court in RSA No. 4044 of 2000. Respondent No. 1 filed objection petition under Order XXI Rule 97 of the CPC (hereinafter to be referred as the "Code"), which were dismissed by learned Executing Court vide order dated 5.2.2004. Against the said order, Respondent No. 1-Plaintiff filed civil appeal No. 248 of 2005 before learned Additional District Judge, Narnaul, which was dismissed on 30.4.2008.

7. Against the same the Plaintiff preferred ESA No. 72 of 2008 before this Court, which was also dismissed vide order dated 12.3.2010.

8. Naresh Kumar son of Respondent No. 1-Plaintiff also filed a civil suit titled as Naresh Kumar v. Municipal Committee, Mohindergarh, Chiman Lal, Bhim Sain, Sewati Bai claiming himself to be the owner in possession of the suit property and the said suit was also dismissed by learned trial Court vide judgment and decree dated 24.1.2005. Naresh Kumar preferred a civil appeal No. 151/RT of 2005/2008 in the Court of learned Additional District Judge, Narnaul, which was also dismissed vide judgment dated 8.9.2008.

9. The Plaintiff filed the present suit claiming himself to be the owner of the suit property and also challenging the judgment and decree passed in civil suit No. 987 of 1990 decided on 22.8.1997 and the judgment and decree dated 4.10.2000 passed by District Judge, Narnaul and order of this Court dated 8.11.2000. The suit was contested by the present Petitioner-Defendant. Issues were framed. Evidence of both the parties were concluded, when the present application for permission to adduce additional evidence was filed by Petitioner-Defendant No. 1, which was dismissed vide impugned order.

10. It has been contended by learned Counsel for Petitioner-Defendant No. 1 that when evidence of Petitioner-Defendant No. 1 was closed on 5.2.2010, judgment passed by learned Civil Judge, Junior Division, Mohindergarh, dated 2.12.2005, vide which objection petition of Respondent No. 1 under Order XXI Rule 97 of the Code was dismissed and the judgment dated 10.4.2008 passed by learned Additional District Judge, Narnaul, against the said judgment passed by learned Civil Judge dismissing the appeal of Respondent No. 1-Plaintiff, had not become final as ESA No. 12 of 2008 filed by him before this Court was pending and hence, the present Petitioner-Defendant No. 1 could not produce these documents at that time. It is further contended that, however, later on the matter was decided by this Court vide judgment dated 12.3.2010 and the rights of the parties were finally decided as the said ESA No. 12 of 2008 filed by Respondent No. 1-Plaintiff was dismissed by this Court. It is further contended that the documents now sought to be produced by way of additional evidence are per se admissible in evidence as the same are copies of judgment and decrees regarding the same property and the other document sought to be produced is copy of objection petition filed by Respondent No. 1-Plaintiff in execution petition No. 28 of 2001 titled as Mohan Lal v. Leeladhar, which was dismissed upto this Court. Hence, it is contended that the said documents are essential for the decision of present controversy and hence, merely on the ground that some of the judgment and decrees were already in existence and in the knowledge of present Petitioner-Defendant No. 1, when he closed his evidence, case of Petitioner-Defendant No. 1 cannot be thrown out by disallowing his request to tender these documents in evidence.

11. On the other hand it has been contended by learned Counsel for Respondent No. 1-Plaintiff that the judgment and decree and the objection petition were already in the knowledge of Petitioner-Defendant No. 1 when he was leading evidence and that he was not a party in all the previous litigation and hence it is contended that no illegality has been committed by learned trial Court in dismissing the application filed by Petitioner-Defendant No. 1 to lead additional evidence. It is also contended that sufficient opportunities were granted to Petitioner-Defendant No. 1 to lead additional evidence by learned trial Court as is clear from various interlocutory orders passed by learned trial Court. He has also placed reliance upon *Sohan Singh v. Gurmej Singh and Ors.* 1 (2002) 132 PLR 329, a judgment rendered by a coordinate Bench of this Court in Regular Second Appeal No. 534 of 1982. However,

in that case point was for adducing additional evidence at appellate stage and hence the said judgment is not applicable to the facts of present case.

12. Another judgment relied upon by counsel for Respondent No. 1- Plaintiff is in the case of Gram Panchayat, Kanehi v. Ram Kumar 2 (2001) 128 PLR 186. However, the said judgment was also rendered on the point of additional evidence during pendency of appeal under Order 41 Rule 27 of the Code.

13. Law on the point as to whether trial Court can permit production of evidence at a later stage by way of additional evidence, even after deletion of provision of Order XVIII Rule 17-A of the Code by amending Act of 2002, has been settled by Hon"ble Apex Court in [Salem Advocate Bar Association, Tamil Nadu Vs. Union of India \(UOI\)](#), by observing that right to produce additional evidence at a later stage by way of additional evidence has not been taken away by the deletion of the said provision, as the Court is always having inherent powers to exercise the jurisdiction for advancement of justice u/s 151 of the Code.

14. A coordinate Bench of this Court in Pawan Kumar v. Raj Kumar and Ors. 4 (2007) 145 PLR 761 by relying upon Salem Advocate Bar Association's case (supra) and on the similar facts observed that in spite of deletion of provisions of Order XVIII Rule 17-A of the Code, the Court has inherent power to allow additional evidence in case it is necessary for the just and proper adjudication of the case and as it is proved on the record that evidence was necessary and otherwise also the evidence sought to be produced was per se admissible in evidence, delay could not stand in the way of allowing the application.

15. Another coordinate Bench of this Court in [Krishan Kumar Sardana Vs. Sita Ram Adalakha and Another](#), also observed that even after deletion of Order XVIII Rule 17-A of the Code, the Court in exercise of inherent power u/s 151 of the Code can allow application to adduce additional evidence, if the same is essential for the just decision of matter in controversy.

16. The procedure is, in the ultimate, the hand-maid justice, meant to advance the cause thereof, than to thwart the same. The procedural wrangles cannot be allowed to stay, in the way of grant of substantial justice. If the substantial justice and the procedural wrangles, are pitted against each other, then the former will prevail over the latter.

17. In [The State of Punjab and Another Vs. Shamlal Murari and Another](#), principle of law, laid down by Hon"ble Apex Court is to the effect that the procedure is, in the ultimate, the handmaid of justice, and not its mistress and is meant to advance its cause, and not to obstruct the same and that a procedural rule, therefore, has to be liberally construed. Hon"ble Apex Court in para 8 of the judgment observed as under:

8... We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, though procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, Courts are to do justice, not to wreck this end product on technicalities....

18. Hence, in view of this legal proposition, this Court is to see as to whether any illegality or material irregularity has been committed by learned trial Court in declining the request of Petitioner-Defendant No. 1 to produce copies of judgment and decree regarding the same property which are per se admissible in evidence and to produce copy of objection petition in earlier litigation filed by none else than Respondent No. 1-Plaintiff. The earlier judgments are regarding the same property. Even in one of the execution petitions arising out of earlier litigation, present Respondent No. 1- Plaintiff filed objection peti(sic)on which was dismissed upto this Court and thereafter Petitioner-Respondent No. 1 had filed this application to produce copies of judgment and decree-sheet of all the previous litigation regarding this property. The documents are per se admissible in additional evidence and essential for the proper adjudication of controversy between the parties. Hence, merely on the ground that some of the documents which were now sought to be produced were in the knowledge of Petitioner-Defendant No. 1 when evidence of Petitioner-Defendant No. 1 was closed, his request for tendering the same in evidence cannot be declined.

19. So far as the fact that this act of Petitioner-Defendant No. 1 has resulted in delay in the decision of present suit is concerned, opposite party, i.e., Respondent No. 1-Plaintiff can be compensated by way of cost.

20. For the reasons recorded above, the present revision petition is accepted. Order dated 18.10.2010, passed by learned Additional Civil Judge, Senior Division, Mahendergarh, is set aside. However, Petitioner-Defendant No. 1 is burdened with cost of Rs. 5,000/-. Learned trial Court is directed to grant one opportunity to Petitioner-Defendant No. 1 to lead additional evidence, as mentioned in the application. However, it is made clear that payment of cost shall be a condition precedent.