

Before K. C. Puri, J.

**GERMANJIT @ JERMANJIT SINGH
AND OTHERS,—Petitioners**

versus

MALKIT KAUR AND OTHERS,—Respondents

Civil Revision No. 8038 of 2011

4th January, 2012

Code of Civil Procedure, 1908 - O.41 Rl. 27 & S.11 - Defendants in a suit for specific performance moved an application for additional evidence before the trial Court which application was dismissed - Subsequently suit decreed - In first appeal, defendants, who were appellants therein, filed an application under O.41 Rl.27 for additional evidence to show that agreement to sell was never executed - Application allowed by first appellate court - Objection that dismissal of application for additional evidence before the trial Court, and no revision having been filed against the said order, operates as res judicata - Objection repelled - Held that every order passed by trial Court can be challenged in appeal, if the same not challenged by filing revision petition - Order of Lower Appellate Court upheld - Revision Petition dismissed.

Held, That no doubt, application for additional evidence was moved before the trial Court and that application was dismissed. It cannot be said that order of dismissal of application for additional evidence operates as res judicata. Every order passed by the trial Court can be challenged in appeal if the same has not been challenged by filing the revision. The order of dismissal of application for additional evidence was not challenged before this Court by filing revision and as such now respondents were well within their rights to challenge the order of dismissal before appellate Court.

(Para 9)

Sudeep Mahajan, Advocate, *for the petitioners.*

K.C. PURI. J.

(1) Challenge in this revision is the order dated 22.11.2011 passed by Shri J.S.Kang, learned Additional District Judge, Amritsar vide which the application filed by defendants before the trial Court and before the First Appellate Court for additional evidence was accepted.

(2) Briefly stated the present petitioners-plaintiffs before the trial Court filed suit for specific performance on the basis of agreement to sell dated 20.5.1984 alleged to be executed by Chanan Singh predecessor-ininterest of defendants/appellants now respondents in respect of land measuring 90 kanals 7 marlas. The learned trial Court, after adjudicating the rights of the parties, decreed the suit of the plaintiffs.

(3) The defendants now respondents preferred appeal before the First Appellate Court. In that appeal, defendants/respondents filed an application under Order 41 Rule 27 of the Code of Civil Procedure (in short – the CPC) that defendants are residents of USA. They inquired from their nephew Raghbir Singh and came to know that alleged agreement to sell stated to have been attested by one Harbhajan Singh, Lamberdar and Balbir Singh was the second witness, residents of village Chawinda Devi and Parma Nand was the deed writer. The said deed writer appeared as PW-1 and has stated that he was not maintaining any register but actually he was maintaining a register. The defendants now respondents have procured the said register, after the death of said deed writer. They moved an application in the trial Court to prove that Parma Nand was telling lie inasmuch as he was maintaining a register. Further, the respondents have procured documents regarding Lamberdari of village Chawinda Devi through RTI from the office of Collector for the year 1948-49 to 1955-1956 and till date. In which, it has been mentioned that there is no Lamberdar with the name of Harbhajan Singh appointed in village Chawinda Devi. Further, it is alleged that Balbir Singh son of Joginder Singh, who is stated to be an attesting witness of the agreement never appeared before the trial Court. In fact, some other Balbir Singh of village Rupowali Chogwan appeared as a witness and made deposition as Balbir Singh son of Joginder Singh, the age of said Balbir Singh was 50 years whereas actual age of Balbir Singh son of Joginder Singh resident of village Chawinda Devi is 75 years. So, the plaintiffs have tried to impersonate another person as Balbir Singh son

of Joginder Singh. It is further pleaded that since they were residing in USA and as such they could not gather information about the said fact. It is further pleaded that 4-5 days prior to the alleged agreement, Chaman Singh executed mortgage deed on which he signed as mortgagor whereas the agreement contains the thumb impression of Chaman Singh, which casts a serious doubt about the execution of the document. The said document is the result of fraud.

(4) The said application was resisted by the plaintiff now petitioners before this Court. It is submitted that similar application was moved before the Civil Judge (Senior Division), Amritsar and that application was dismissed. No revision was filed against the said order of dismissal of application for additional evidence. The order of dismissal of application has become final and that order has not been challenged in the application. The application is not maintainable.

(5) The First Appellate Court after hearing both the parties accepted the application for additional evidence.

(6) Feeling aggrieved against the order dated 22.11.2011 passed by the First Appellate Court, the present revision petition has been filed.

(7) At the out set, learned counsel for the revisionist has submitted that order of dismissing application by the trial Court operates as res judicata and cannot be re-agitated in view of Section 11 of the CPC. To fortify his argument, learned counsel for the petitioners has relied upon authorities **Ajay Mohan & Ors versus H.N.Rai & Ors. (1)** and **Barkat Ali & Anr. versus Badri Narain (D) by Lrs. (2)**.

(8) I have carefully considered the said submissions but do not find any force in that submission.

(9) No doubt, application for additional evidence was moved before the trial Court and that application was dismissed. It cannot be said that order of dismissal of application for additional evidence operates as res judicata. Every order passed by the trial Court can be challenged in appeal if the same has not been challenged by filing the revision. The order of

(1) 2008(1) BCR 535 = 2007 (6) Recent Apex Judgments 662

(2) 2008(2) Civil Court Cases 87

dismissal of application for additional evidence was not challenged before this Court by filing revision and as such now respondents were well within their rights to challenge the order of dismissal before appellate Court.

(10) So far as the authorities **Ajay Mohan & Ors' case (supra)** and **Barkat Ali & Anr.'s case (supra)** are concerned, these authorities are distinguishable to the facts of the present case. The ratio of law laid down in both these authorities is that if the matter has been decided by the Court and thereafter the same point cannot be re-agitated before the same Court by filing second petition. The appeal is the continuation of suit. The defendants/appellants now respondents wanted to produce material evidence, which goes to the root of the case. The learned First Appellate Court, after considering the submissions made by both the sides have exercised the jurisdiction by allowing the application as envisaged under Order 41 Rule 27 of the CPC. The counsel for the petitioners could not point out that the first Appellate Court has committed any illegality or has exceeded its jurisdiction while allowing the application. The plaintiffs now petitioners have produced register of deed writer, who has stated that he is not maintaining any register. The defendants/appellants now respondents wanted to prove the fact that he was maintaining a register. According to the case of plaintiffs Harbhaajn Singh was the Lamberdar of village Chawinda Devi but the defendants have produced information received under RTI that Harbhajan Singh never remained Lamberdar of the said village. The other allegation of the defendants is that another Balbir Singh appeared instead witness mentioned on the agreement. The reason given by the defendants-respondents that not producing the evidence before the trial court at an early stage was that they are residents of USA and on that account the said evidence could not be produced. Another circumstance, which goes in favour of the defendants/respondents is that before the trial court also an application for additional evidence was moved which was wrongly declined by the trial Court. All these questions raised by the defendants/respondents go to the root of the case and as such the First Appellate Court has rightly allowed the application for additional evidence.

(11) So, in view of the above discussion, the present revision petition is without any merit and the same stands dismissed.

(12) However, it is made clear that any observations made above shall not be construed as an expression of opinion on the merits of the main case. Needless to say that First Appellate Court shall afford opportunity to the plaintiffs to rebut the evidence produced by the defendants/now respondents.

(13) A copy of this judgment be sent to the trial Court for strict compliance.

P.S. Bajwa/J. Thakur

Before M. M. Kumar & Ajay Kumar Mittal, JJ.

BALJIT SINGH,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

LPA No. 125 of 2012

27th January, 2012

Prevention of Corruption Act, 1988 - Delinquent employee charged under the Prevention of Corruption Act 1988, but acquitted by the criminal Court - Departmental inquiry found the employee guilty and dismissed him from service - Statutory appeal and revision rejected - Writ Petition dismissed by Single Judge -Parameters of standard of proof in departmental proceedings distinct from ones required in criminal trial-courts of law cannot re-appreciate evidence recorded in departmental inquiry - No violation of principles of natural justice or statutory rules -Procedural requirements fulfilled - LPA dismissed.

Held, That as a concept of law the Courts cannot re-appreciate evidence to reach a conclusion different than the one recorded by the Enquiry Officer merely because another view is possible.

(Para 3)