

CS No. 392/17

Hem Chand Jain Vs. Baljeet Singh & Ors.

01.08.2018

Present: Sh. Manish Bansal, counsel for the plaintiffs.

Sh. C.P. Malik and Sh. Deepender Hooda, counsels
for the defendants.

Today, the matter is listed for order on the application filed by the plaintiff u/O. 7 Rule 14 (3) CPC.

Vide the aforesaid application, the plaintiff is seeking to place on record the documents such as Certified copies of Mutation No. 56 of year 1948, Khatoni of year 1968-69 and 1969-70, Field book and Certified copies of Mutation Entry no. 72 contending inter-alia that the said documents are vital for disposal of the present suit as PW-1 and PW-2 had been cross-questioned by the counsel for the defendant regarding non-filing of any documents showing consolidation of Old Khasra nos. 86, 87, 88, 89, 90, 72 and 73 to new Khasra No. 52 of the Roshan Mandi, Masoodabad, Najafgarh New Delhi. Counsel for the plaintiff further submitted that the need for placing on record the aforementioned documents have arisen only after the cross-examination of PW-1 and PW-2 by the counsel for the defendant in as much as records of revenue authorities were inspected and thereafter, the said documents/records have been obtained which was not in the possession of the plaintiff at the time of filing of the suit. He further submitted that the said documents have been inadvertently left to be filed.

Defendant has filed the reply to the aforesaid application of the plaintiff. In his application, defendant contended that almost the entire plaintiff's evidence has been concluded and if the said application is allowed, the defendant shall have to cross-examine further the plaintiff on these documents and shall amount to *de-novo* trial in the present matter. He further contended that in his plaint, plaintiff neither relied upon the aforementioned documents which are sought to be placed on record by him, nor mentioned the person in whose possession the said documents are and therefore, plaintiff cannot be permitted to place the said documents in such manner at this belated stage. Furthermore, the documents sought to be placed on record by the plaintiff, are beyond pleadings and by way of filing his application, the plaintiff trying to fill the lacuna and improve his case.

I am in agreement with the submission of the counsel for the defendants to the effect that if the aforesaid documents are taken on record, it will amount to a *de-novo* trial. Moreover, the plaintiff has not given any reason for not filing the aforesaid documents at the appropriate stage and the only reason given in the present application is that the need to file the aforesaid documents arose as the counsel for the defendants asked certain questions to PW-1 and PW-2. The plaintiff cannot be given an opportunity to fill the lacuna of his case. As per the mandate of Order 7 Rule 14(3) of Code of Civil Procedure, the plaintiff was required to satisfy this court that the said documents were earlier not within his knowledge or could not be produced at the appropriate time inspite of due diligence. However, there is no whisper about the aforesaid pre-conditions of Order 7 Rule 14(3)

CPC in the application of the plaintiff. In view of the aforesaid when the plaintiff is not diligent in pursuing his case, no indulgence is required in his favour, more so, when plaintiff has already examined seven witnesses and his evidence are on the verge of conclusion, the application of the plaintiff u/O. 7 Rule 14 (3) CPC is dismissed.

Witnesses i.e. concerned Record Attendant from the office of Delhi Archives Department, Satsang Vihar Marg, concerned Record Attendant from the office of Sub-registrar -II, Delhi office, Basai Darapur, New Delhi and concerned Record Attendant from the office of Sub-registrar, Kashmere Gate, Delhi are absent despite service of summons.

It is 1:15 PM. Issue show cause notice to the aforementioned witnesses for the next date of hearing. Ahlmad is directed to issue the summons within three days from today and mention the time i.e. 12:30 PM on the summons/process of the said witnesses itself.

Now, to come up for PE on **18.08.2018 at 12:30 PM.**

(Mohd. Farrukh)
ADJ(SW)/Dwarka Courts
01.08.2018