

Baljit Singh Vs. Tejinder Singh etc. 581-2014.

Present:- Shri Ranjit Singh Adv, counsel for plaintiff.
Shri Rajinder Singh Adv, counsel for defendant No.2-A
Shri Pritpal Singh Adv, counsel for defendant No.3.
Defendant No.3 died)
Remaining defendants exparte.

Heard on application moved by Makhan Singh defendant No.2-A, seeking permission to lead additional evidence for tendering copies of jamabandies for the 1996-97, 2006-07, 2011-12, 2016-17. On the contrary, the application is opposed by the plaintiff.

2- Heard. File perused. Applicant / defendant No.2-A namely Makhan Singh has moved present application and submitted that the copies of jamabandies for the 1996-97, 2006-07, 2011-12, 2016-17 are very much necessary to be brought on record for proper adjudication of the matter in controversy. Further, it is orally argued by learned counsel for applicant/ defendant No.2-A that these jamabandies were specifically put to the witnesses during the course of cross-examination and as such, these are required to be produced on record for just adjudication of the case, whereas the perusal of the file reveals that these jamabandies were never put to the witnesses during the course of cross-examination and further, no reason has been assigned as to why these were not produced at earlier stage.

Though defendant no.2-A has moved present application and sought permission to lead additional evidence but nothing has been mentioned in the application that on which grounds, he wants to lead additional evidence and what were the reasons due to which, the abovesaid documents could not be brought on record. The question which arises before the court for consideration is that whether the

applicant can be permitted to lead any additional evidence? The answer is in the negative. Here not even a single fact has been mentioned in the application for leading additional evidence.

3- Hon'ble Supreme Court of India in **K.K.Velusamy Vs. N.Palanisamy 2011 (2) Civil Court Cases 823**, wherein it has been held as under:-

“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 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 record, the court may also listen to the recording before granting or rejecting the application.”

4- From the above referred judgment, it is to be seen whether the application has been filed bona fide and for sufficient reasons. From the perusal of the file, it is clear that the instant suit was filed on 01.11.2014 and after framing of issues, the parties have already led their respective. The present application has been moved only to delay the proceedings of the case and otherwise also, no additional evidence can be permitted to fill up the lacuna. Accordingly, the application in hand being devoid of any merits stands dismissed.

5- Now to come up on 10.08.2023 for rebuttal evidence, if any, otherwise for addressing final arguments.

Pronounced:

**Gurbhinder Singh Johal, PCS,
Addl. Civil Judge (Sr. Division),
Sunam, UID No. PB0373.**

Date of order: 08.08.2023.
(Jaswinder Singh, Stenographer Gr.II).