



IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

CMPMO No. 11 of 2023
Decided on 16th July 2025

Mahanta through legal heir Buaditta

...Petitioner

Versus

Gopal Chand and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes

For the petitioner: Mr. Vikas Rajput, Advocate.

For the respondents: Mr. Vijender Katoch, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition filed under Article 227 of the Constitution of India, the petitioner has prayed for the following relief:-

"To quash Annexure P-7, i.e. the impugned order dated 04.11.2022 and kindly allow the petitioner/plaintiff to adduce additional evidence as well as secondary evidence in accordance with law."

2. Learned counsel for the petitioner has submitted that the impugned order dated 04.11.2022 is not sustainable in the eyes of law as the learned Court below has erred in not appreciating the leading of additional evidence as well as

secondary evidence that was necessary for the adjudication of the case. This is an extremely important aspect of the matter that was not taken into consideration while dismissing the applications filed by the petitioner to lead the additional and secondary evidence.

3. On the other hand, learned counsel for the respondents has submitted that there is no infirmity in the impugned order. As a perusal thereof would demonstrate that filing of the applications by the petitioner was nothing, but an abuse of the process of law, who was trying to delay the matter on one pretext or the other. Learned counsel further submitted that as the learned Trial Court has rightly rejected the application of the petitioner and further in exercise of its jurisdiction under Article 227 of the Constitution of India, this Court is not to sit as an Appellate Court, therefore, the present petition be dismissed.

4. I have heard learned counsel for the parties and have also gone through the documents appended with the petition.

5. A perusal of the documents as well as the order under challenge demonstrates that the suit was filed by the present petitioner for possession of the vacant land by way of demolition or removing the Malwa over the land comprised in Khata No.288, Khatauni No.466, Khasra No.982, land measuring 0-07-94 HM (awadi deh) situated in the revenue estate of Muhal & Mauza Chanour District Kangra (HP), in the year 2012. Thereafter, post completion of pleadings, the issues were framed on 21.09.2013. The matter was thereafter listed for recording the evidence of the plaintiff. The plaintiff closed his evidence on 14.05.2014 and thereafter the defendant led their evidence, which was closed on 27.02.2015. The matter was thereafter listed before the learned Trial Court for leading rebuttal evidence by the plaintiff, for which, the plaintiff took nine opportunities. When the case was listed for the said purpose on 24.03.2017, rather than leading rebuttal evidence, the plaintiff filed an application under Section 65 of the Indian Evidence Act and on 24.03.2018, the evidence was led in the application so filed by the plaintiff. Thereafter, the matter was adjourned for the consideration of the said application on three

occasions. On 08.04.2019, said application was withdrawn by the learned counsel for the plaintiff and the matter was listed for argument. The matter was adjourned on a number of occasions and thereafter, when the case was listed on 17.03.2021, fresh applications were filed by the plaintiff praying for permission to lead additional as well as secondary evidence. It is this said application, that has been rejected by the learned Trial Court in terms of the impugned order dated 04.11.2022. The reasons spelled out in the order leading to the rejection of the application are reproduced hereinbelow:-

"It is a matter of record that a previous same application was filed by the plaintiff, which was withdrawn by the plaintiff himself and matter thereafter, was listed for arguments and after taking numbers of adjournment for arguments, the present applications were moved and it is a matter of record that counsel for plaintiff was given sufficient opportunities to lead his evidence in rebuttal, still he is seeking one further opportunity to lead additional evidence. Additional evidence can be allowed by the court, if facts and circumstances of the case warrant the same and court has to use its discretion judiciously. More importantly, the court should also be mindful, that the other party is not dragged on in a litigation unnecessarily which would cause serious prejudice to the other party. In the present case, sufficient opportunities were given to the plaintiff to lead his evidence. 4 dates/opportunities were given to the plaintiff in rebuttal evidence, at the end of which, plaintiff moved a same application seeking leave of the court to prove sale certificate and receipt by way of secondary evidence which was withdrawn by plaintiff

himself through his counsel and separate statement is also on record.

Evidently, sufficient opportunities have been given to the plaintiff to prove his case and despite number of opportunities given to him to lead his evidence, he is once again seeking leave of the court to lead additional evidence, which would further linger on the matter and cause serious prejudice to the other party, therefore, this court does not seem it fit to allow these applications. Hence, both the applications filed under Section 151 of CPC & under Section 65 of the Indian Evidence are dismissed. It be tagged with main case file."

6. Having perused the reasoning given by the learned Trial Court, this Court is of the considered view that there is no infirmity therein. It is evident and apparent that after the closure of the evidence of the defendant on 27.02.2015, the matter is being dragged on for the acts of omission on the part of the plaintiff. Firstly, nine opportunities were taken to lead rebuttal evidence and thereafter, an application was filed in the year 2018, under Section 65 of the Evidence Act, which was subsequently withdrawn on 08.04.2019.

7. After the withdrawal of the application that was filed under Section 65 of the Indian Evidence Act, the matter was listed for argument, but ultimately on 17.03.2021, again two applications were filed by the petitioner, which now stand dismissed. All this demonstrates that the intent of the plaintiff

was only to delay the matter. I have perused the applications, which were filed and perusal thereof demonstrates that no cogent explanation has come forth in the application as to why what is now being intended to be done in terms of the said applications could not be done earlier. This clearly demonstrates that the filing of the applications was nothing, but a tactic deployed by the petitioner to delay the matter further.

8. Therefore, as this Court does not find any perversity with the order dated 04.11.2022, passed by the learned Court below, in terms whereof, the applications filed by the petitioner to lead additional evidence as well as the secondary evidence has been dismissed, the petition is dismissed with cost of Rs.10,000/-, which will be paid by the petitioner to the respondents herein within a period of four weeks from today.

9. For compliance of this part of the order, list on 18.08.2025.

(Ajay Mohan Goel)
Judge

July 16, 2025
(Vinod)