

Mani Ram Vs. Daya Kishan

Mani Ram Vs. Daya Kishan

SooperKanoon Citation : sooperkanoon.com/621097

Court : Punjab and Haryana

Decided On : Apr-05-2004

Reported in : (2004)138PLR169

Judge : M.M. Kumar, J.

Acts : [Evidence Act, 1872](#) - Sections 63 and 65

Appeal No. : Civil Revision No. 1720 of 2004

Appellant : Mani Ram

Respondent : Daya Kishan

Advocate for Def. : Mr. Adarsh Jain

Advocate for Pet/Ap. : Adarsh Jain, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This revision petition filed under Article 227 of the Constitution prays for quashing order dated 11.2.2004 passed by the Addl. Civil Judge (Jr. Division), Palwal holding that the defendant-petitioner was not entitled to adduce secondary evidence of receipt dated 30.6.1977 by tendering a photocopy thereof. The

principle reason recorded by the learned Civil Judge for declining the application to lead secondary evidence is that no mention of the receipt was made in the pleadings by the defendant-petitioner.

2. The plaintiff-respondent had filed a civil suit for permanent injunction claiming that he was owner in possession of Gair Mumkin fully described in the title of the suit. It was alleged that the suit property is being used by the plaintiff-respondent and the defendant-petitioner has no right. On that basis a decree for injunction to restrain the defendant-petitioner from interfering in the possession of the plaintiff-respondent was prayed.

3. In the written statement filed by the defendant-petitioner, it was claimed that the plaintiff-respondent was not the owner or in possession of the suit property which was owned and possessed exclusively by the defendant-petitioner being a bona fide purchaser from the father of the plaintiff-respondent, more than 20 years ago. However, no mention was made with regard to any document in the shape of a registered sale-deed or informal receipt. During the pendency of the proceedings, the defendant-petitioner filed an application alleging that the original receipt executed by the father of the plaintiff-respondent, Nathi, showing that Rs. 20,000/- was paid to him on 30.6.1977, was lost. In support of the averment a DDK dated 28.8.2003 was relied upon. A photostat copy of the receipt was produced which showed that it was not a registered document. The learned Civil Judge has dismissed the application by observing that no plea with regard to execution of receipt dated 30.6.1977 was set up although the loss of the aforementioned document was not required to be established in absolute term. On the aforementioned basis that the document was not disclosed in the written statement, the Civil Judge has dismissed the application for adducing secondary evidence.

4. Mr. Adarsh Jain, learned counsel for the defendant-petitioner has argued that specific stand has been taken in the written statement that the suit property was sold by the father of the plaintiff-respondent and furnishing of further details was matter of evidence. According to the learned counsel in such circumstances, once loss is established, secondary evidence under Sections 63 and 65 of the Indian

[Evidence Act, 1872](#) should have been permitted.

5. After hearing the learned counsel, I am of the considered opinion that the view taken by the learned Civil Judge does not suffer from any legal infirmity because in a case where there was no other document in existence and the only document to prove the sale was the receipt dated 30.6.1977, ordinarily such a document would have been disclosed in the written statement. The failure to disclose the truth has raised a valid doubt in the mind of the court that at the first available opportunity the document has not been disclosed and in such circumstances secondary evidence could not be permitted. The order passed by the Civil Judge rests within the four corners of law. No ground is made out to interfere with the impugned order. In view of the above, the revision petition fails and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com