

Mohan Pal Singh and anr. Vs. Karam Pal Singh and anr.

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Court : Punjab and Haryana

Decided On : Feb-16-2010

Judge : Ajay Tewari, J.

Appellant : Mohan Pal Singh and anr.

Respondent : Karam Pal Singh and anr.

Judgement :

Ajay Tewari, J.

1. This petition has been filed against the order dated 17.12.2009 passed by learned Civil Judge (Senior Division), Muktsar declining the application of the petitioners for permission to lead secondary evidence.

2. Learned Counsel for the petitioners has stated that under an earlier order of this Court the petitioners had been granted two opportunities to lead their evidence and it was while they were leading their evidence on the second of said opportunities that the application was made for permission to prove two affidavits by way of secondary evidence. Learned trial Court by the impugned order rejected the application in view of the earlier decision of this Court and in view of the fact that no effort was made by the petitioners earlier to prove these affidavits. However, permission to prove an earlier judgment and decree was granted. Learned Counsel has argued that since the matter had been adjourned for cross-examination of the witness, no prejudice would be caused if the permission was

granted.

3. Learned Counsel for the respondents has, however, argued that this application cannot be allowed since even during the evidence of the respondents these very photocopies of these very affidavits were put to the witness of the respondents and on an objection taken by learned Counsel for the respondents regarding their admissibility (being photocopies) the same were not allowed to be put to the said witness. Learned Counsel has argued that thus the petitioners knew at the very outset when they led their evidence that they would face this problem yet they did not move the application in the beginning but are moving it now at the fag end. Learned Counsel has further argued that in these circumstances it cannot be said that the discretion exercised by the learned trial court is vitiated with material irregularity and thus this Court would not interfere only because another view was possible.

4. Both the Counsel have relied upon a number of judgments wherein the entire gamut of Section 63 has been discussed. In this regard the list of judgments relied upon by the learned Counsel is reproduced herein below:

1. The Roman Catholic Mission v. State of Madras reported as : AIR 1966 SC 1457.
2. Ashok Dulichand v. Madhavlal Dube and Anr. reported as : 1975(4) SCC 664.
3. Smt. J. Yashoda v. Smt. K. Shoba Rani reported as : AIR 2007 SC 1721.
4. Jaldu Ananta Raghuram Arya and Ors. v. Rajah Bommadevara Naga Chayadevamma and Ors. reported as AIR 1958 AP 418.
5. Parekh Brothers v. Kartick Chandra Saha and Ors. reported as : AIR 1968 Calcutta 532.
6. Smt. K. Neelamma v. B. Suryanarayana and Ors. reported as AIR 1990 C.C. 568.
7. Indian Overseas Bank v. Shayama & Co. reported as 1993(1) PLR 630.

8. Surinder Kumar v. Murari Lal reported as 1993(2) RRR 535
9. Paramjit Kaur v. Sat Kartar Singh and Anr. reported as 1998(1) PLR 804.
10. Mangat Ram v. Prabhu Dayal and Ors. reported as 2002(4) RCR (Civil) 706.
11. Banarsi Dass v. Om Parkash and Ors. reported as 2005 (2) PLR 358.
12. Parkash Chand Kapoor Chand v. Inderjit Singh and Ors. reported as 2006(3) RCR (Civil) 700
13. Bahadur Singh v. Dalbir Singh and Ors. CR No. 7204 of 2008 decided on 11.09.2009.
14. Manjit Kaur and Anr. v. Veer Pal Kaur and Ors. CR No. 5476 of 2008, decided on 20.11.2009.
15. Ram Pyari v. Bhagwan Dass and Ors. CR No. 6536 of 2008 decided on 17.12.2009

5. I have gone through each one of the said judgments but it would be impossible to make a detailed reference to them. The result which can be drawn is that to prove a document by way of primary or secondary evidence is itself a rule of evidence. Before arriving at a conclusion as to the correctness or veracity of the secondary evidence it is incumbent upon the court to first examine whether the applicant has proved the existence and the subsequent loss of the original document. It is trite to say that by permitting the petitioners to lead secondary evidence it cannot be held that the court has found as a fact that the original affidavit existed or that its loss had been satisfactorily proved. It is only if that is proved that any secondary evidence would be read.

6. Coming to the factors which weighed with the trial court, no doubt this Court had earlier granted the petitioners two opportunities to lead their entire evidence but, as pointed out, the application was moved during the said two opportunities. The learned trial court also found that the petitioners could have moved this application at an earlier stage. Even if this to be so, the respondents can well be compensated with costs. On the other hand if evidence which is otherwise admissible and

relevant is permitted to be shut out, the prejudice caused to the petitioners would be much more. On a conspectus of all the facts and the law, in my opinion it would be in the interest of justice to allow the petitioners permission to lead secondary evidence of the affidavits. However, the said evidence would be read only if the petitioners are able to independently prove the existence of the original and the loss thereof. This would be subject to the payment of Rs. 25,000/-as costs to be paid to respondent No. 1 by way of demand draft. Since this matter is stated to be fixed on 16.02.2010 before the trial court, the petitioners shall lead their entire evidence in this regard on any one date to be fixed. The payment of costs would be a condition precedent.

7. Let a copy of this order be handed over dasti to the learned Counsel under the signatures of the Court Secretary.

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