

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.6327 of 2015 (O&M)
Date of decision: 30.11.2015**

Siri Ram and another

....Petitioners

Versus

Baldev Krishan and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Surinder Garg, Advocate
for the petitioners.

RITU BAHRI J. (Oral)

CM No.23766-CII of 2015

For the grounds mentioned in the application, the same
is allowed and the Zimini Orders are taken on record.

Application stands disposed of.

MAIN CASE

The petitioners have come up in revision for setting-
aside the order dated 05.08.2015 (Annexure P-2), passed by the
Civil Judge (Jr. Division), Mansa, vide which the trial Court has
allowed the defendant/respondent No.1, namely, Baldev Krishan,

to lead secondary evidence with regard to Rapat Roznamcha No.310 dated 17.04.1999, without issuing notice to the petitioners.

A perusal of the impugned order dated 05.08.2015, shows that the case was fixed for leading additional evidence when the statement was made by Record-keeper of the Deputy Commissioner Officer, Mansa, that he is present along with file No.10/RE/10F dated 15.11.1988 decided on 10.12.1992. He has further stated that file No.128 dated 17.04.1999 of village Mansa Kalan regarding possession proceedings was not available in their office. He further stated that the said file related to partition proceedings was available in the office of Tehsildar/Kanungo, Mansa. As such, the concerned Tehsildar, was directed to be present in Court with above titled filed regarding partition proceedings. On 05.08.2015, an application was moved by counsel for defendant No.1 in Court that in case the abovesaid file pertaining to partition proceedings was not traceable in that eventuality, the defendant be allowed to examine the Rapat of Rozanamcha No.310 dated 17.04.1999 in secondary evidence. This application was allowed simply with a condition that only in the absence of the file regarding the partition proceedings was not traceable, then the Rapat of Rozanamcha No.310 dated 17.04.1999 can be lead in secondary evidence.

Learned counsel for the petitioners has placed on record the zimini orders vide CM No.23766-CII of 2015 and a

perusal of the order dated 10.08.2015, shows that the Tehsildar, Mansa, namely, Sh. Darshan Kumar has got recorded his statement to the effect the efforts were made to trace the file pertaining to possession related to case titled as “Ramesh Kumar vs Baldev Krishan”, but the same was not traceable.

In this background, once the file was not traceable, then the Rapat Roznamcha No.310 dated 17.04.1999, was allowed to be lead as a secondary evidence. Defendant No.1-Baldev Krishan along with one another witness, namely, Lachman Singh, Chowkidar, were present and both of them were bound down for the next date of hearing i.e. 17.08.2015. Thereafter, on 17.08.2015, DW-11-Patwari Baz Singh has appeared and tendered into evidence the self-attested photocopy of Roznamcha No.310 dated 17.04.1999 as Ex.DW-11/A and copy of possession proceedings as Ex.DW-11/B. DW-12, Lachman Singh, Chowkidar, has also appeared and tendered into evidence his duly sworn affidavit Ex.DW-12/A. Thereafter, on 06.10.2015, defendant No.1-Baldev Krishan has tendered his examination-in-chief.

A perusal of the zimini order further makes it clear that the trial Court had proceeded with the secondary evidence only when the statement was made by Tehsildar-Darshan Kumar, that the file pertaining to partition proceedings was not traceable and in the absence of original file, the secondary evidence has rightly been taken into consideration by the trial Court.

No ground for interference is made out.

Dismissed.

(RITU BAHRI)
JUDGE

30.11.2015
yakub