

CR No. 6944 of 2017 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No. 6944 of 2017 (O&M)
Date of decision: 7.10.2017**

Jagdish and others

...Petitioners

Versus

Satbir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ajay Kumar Kansal, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 6.9.2017 (Annexure P-4) passed by the learned trial court, whereby defendants were permitted to lead secondary evidence about the order dated 29.4.1965, plaintiffs have approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioners.

A bare reading of the impugned order would show that each and every relevant aspect of the matter was duly considered and rightly appreciated by the learned trial court before passing the impugned order. It was rightly held by the learned trial court that defendants have duly fulfilled the requirements of Section 65 of the Indian Evidence Act, so as to entitle themselves for leading secondary evidence. Existence as well as loss of the document has been duly established on record. Having said that, this Court feels no hesitation to conclude that the learned trial court was well within its

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jurisdiction to pass the impugned order and the same deserves to be upheld.

So far as the judgments of this Court in **Mukesh Kumar alias Motta Vs. State of Haryana, 2011 (1) RCR (civil) 675; Sachin Khurana and others Vs. Satish Kumar Khurana and others, 2016 LawSuit (P&H) 1157 and Ram Paul Goel Vs. Pawan Kumar, 2010 (5) RCR (civ) 625**, relied upon by learned counsel for the petitioners are concerned, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioners, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes*

a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned

Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER

294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham* (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it

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marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it

Ed. See *Union of India VS. Amrit Lal Manchanda*, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

As noticed hereinabove, so far as existence of the document in question is concerned, it has already been proved by the plaintiffs-petitioners themselves by bringing on record photocopy of the document as Mark PA. Further, entire case of the plaintiffs-petitioners in their suit for declaration, whereby they have challenged mutation No. 2226 dated 3.4.2012, is based on the order of Settlement Officer, Sangrur, in case No. 1345/SO dated 29.4.1965, pertaining to the disputed land measuring 14K 9M, thus, very genesis of the litigation is order dated 29.4.1965.

Now the questions arises, as to whether this document in the form of order dated 29.4.1965 ever came into existence or not. Photocopy of this order, which was also shown to this Court by the learned counsel for the petitioners during the course of hearing, had already been brought on record by the plaintiffs-petitioners themselves as Mark PA. Further, bare perusal of the order dated 29.4.1965 would show that it bears signatures of the Settlement Officer and also the number as well as date of endorsement thereon. The order has got its serial number, date of institution and date of decision also on its first page. It can also not be denied that the document is coming from proper custody. Once the document is coming from proper custody, there cannot be any scope of its fabrication, which also shows that the document is genuine.

Next question that arises is as to whether the defendants who

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sought to lead secondary evidence regarding this document in the form of order dated 29.4.1965, have, as a matter of fact, proved that document has either been destroyed or lost.

Defendants, to prove the loss of this document, called Sh. Chander Parkash, Record Keeper, DC Office, Jind, with original file of the order. This official stated before the court that original file in which original order dated 29.4.1965 was there, was sent to copying branch vide dispatch No. 28 dated 16.5.1994 as per official record. He further deposed that said original file has not been received back from the copying agency till date. He also stated that the file in question was consigned to record room vide Goshwara No. 778. He tendered on record all the entries regarding consignment of the said file, dispatch of the said file to the copying agency and the application filed for copy.

Thus, defendants have duly proved on record not only existence but also loss of the document, which clearly entitled them to lead secondary evidence qua this document in the form of order dated 29.4.1965 passed by the settlement Officer, Sangrur, in the case bearing file No. 1345/SO. This case was instituted before the Settlement Officer, Sangrur, on 11.8.1964 and it was decided on 29.4.1965. Once all these relevant facts were duly considered and appreciated in the correct perspective by the learned trial court before passing the impugned order, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising

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its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

7.10.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No