

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

CR No.7787 of 2015

Date of decision: 24.01.2017

Janak Dulari

..Petitioner

Versus

Gurcharan Singh

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. B.S. Bhalla, Advocate
for the petitioner.

Daya Chaudhary, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 28.10.2015 (Annexure P-6) passed by Civil Judge (Junior Division), Moga, whereby, application moved by the petitioner for return of original document has been dismissed.

Learned counsel for the petitioner submits that the petitioner filed two suits before the Civil Court and one document was interchanged inadvertently. Thereafter, the petitioner moved an application for return of original document so that it can be placed on record in other suit but the Civil Court dismissed the application without saying anything on the merits, which has caused miscarriage of justice. Learned counsel has also relied upon judgment of the Madras High Court in *S. Senthamarai vs. J. Vijayakumaran and another, 2013 (44) RCR (Civil) 127*; judgment of the Bombay High Court in *Gowardhan Das vs. State of Maharashtra through*

the Police Station Officer, Nagpur & anr., 2008(3) ICC 738; judgment of the Andhra Pradesh High Court in *M. Satyanarayana @ Pedda Raju vs. Katama Raju, 2009(6) ALT 93* and judgment of the Jammu and Kashmir High Court in *Prem Lata Malhotra vs. Shiv Nath Sharma, 1997 AIR (J&K) 130* in support of his arguments.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

A perusal of application as well as the order passed in the application would show that no provision whatsoever has been mentioned. Even on perusal of impugned order, it is apparent that the Civil Court has commented on the veracity of the document and not on the issue as to whether said document was inadvertently placed on record with the plaint or there was any relevancy with the suit filed by the petitioner.

A specific ground has been taken by the petitioner in the application that two suits were filed and inadvertently, the document was interchanged.

It was the duty of the Civil Court to see as to whether there was any mention of the document in the plaint or not. Simply it has been mentioned that the document was not properly stamped or scribed on the requisite stamp papers as required under law. It has also been mentioned in the impugned order that the applicant has already availed more than nine opportunities but has not led any single evidence on record. It is also the duty of the Court to see as to whether the document was relating to the controversy in the suit or not.

However, the petitioner has also not moved proper application as document can be returned as per provision of Order 13 Rule 9 CPC.

It is also well settled position of law that the application should not have been dismissed in the interest of justice only on the ground that the provision of law was not mentioned. It is also to be seen whether the application was maintainable or not keeping in view the facts mentioned in the application but neither the merits have been touched nor any specific reason for not allowing the petitioner-plaintiff to return the original document has been mentioned.

Accordingly, impugned order dated 28.10.2015 is set-aside and the present revision petition is disposed of with a direction to the petitioner to move appropriate application before the Civil Court under the relevant provision within a period of one month from the date of receipt of certified copy of this order and in case, such an application is moved, the Civil Court is directed to decide the same by considering the judgments relied upon by learned counsel for the petitioner and the observation made hereinabove in accordance with law within a period of one month thereafter.

Disposed of accordingly.

24.01.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No