

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

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CR No.5255 of 2018 (O & M)
Date of Decision:16.08.2018

Brij Bhan Sharma

...Petitioner

Versus

Sumitra Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Goyatt, Advocate
for the petitioner.

ANIL KSHETARPAL, J.(Oral)

Petitioner has filed this revision petition against the order passed by the learned Additional District Judge dated 25.07.2018 rejecting the prayer made by learned counsel for remanding the case to the learned trial Court.

It may be noticed that in evidence, affidavits of PW-3 Sumitra and RW-2 Brij Bhan were filed. On the basis of the aforesaid affidavits, counsels cross-examined the witnesses and trial of the case concluded. However, in first appeal, it was found that original affidavits of Sumitra and Brij Bhan i.e. PW-3 and RW-2 were not on record. The Court called upon the counsels to provide office copy of the aforesaid affidavits, which were duly supplied and taken on record. Subsequently, original affidavits were traced and taken on record.

Learned counsel for the petitioner submits that since the aforesaid affidavits do not bear the endorsement as provided under Order 13

Rule 4(1)(d) CPC, therefore, such affidavits could not be taken on record

and the case was required to be remanded. Learned counsel has relied upon the judgment passed by this Court in the case of “Prem Singh vs. Mangal Singh and others” 1977 RLR 170.

This Court has considered the submission. Order 13 Rule 4 of the Code of Civil Procedure only provides for a procedure for endorsement of the documents by the Presiding Judge, admitted in evidence. However, it is nowhere provided that if the Presiding Judge fails to endorse the document, the document cannot be read as part of the record.

Still further, learned First Appellate Court has compared the office copy/photocopy produced by the counsels and the original which has been traced out both are exactly the same.

The reliance placed by learned counsel on the judgment is also misplaced because in the aforesaid case only an order was passed and holding that the Court can remand the case on this ground. However, as a preposition of law it has not been laid down that in all cases where Presiding Judge fails to endorse the document filed, the case must be remitted back even if it has been decided on merits in accordance with law.

In view thereof, there is no ground to interfere.

Revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

16.08.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No