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

Civil Revision No.829 of 2018

Date of Decision : 01.08.2018

Yaspal Doda

.....Petitioner

Versus

Arun Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Vikas Kumar, Advocate
for the petitioner.

Mr. Ravi K.Mattoo, Advocate for
Mr. Viranjeet Singh, Advocate
for the respondents.

B.S. Walia J. (Oral)

1. Challenge in the revision petition is to order dated 15.01.2018 (Annexure P-1), passed by the learned Addl. Civil Judge (Senior Division), Fazilka (hereinafter referred to as 'the learned Addl. Civil Judge'), vide which the application of the petitioner-plaintiff for grant of leave to produce on record certified copy of judgment and decree dated 02.04.1981 (Annexure P-2), passed by the Court of the learned Sub Judge Ist Class, Fazilka, regarding declaration of rights of the parties pertaining to the shop in question, was dismissed.

2. Learned counsel for the petitioner-plaintiff contends that the petitioner-plaintiff could not produce certified copy of judgment and decree dated 02.04.1981 (Annexure P2) on record earlier and moved the

application immediately on tracing out the same on 16.11.2013, the

document being *per-se* admissible ought to have been allowed to be placed on record particularly in view of the fact that the provisions of Order 7 Rule 14 Code of Civil Procedure, were not mandatory but directory.

3. Per contra, learned counsel for the respondents contended that the petitioner-plaintiff had already led evidence, therefore, in the absence of due diligence having been shown, permission to place on record judgment and decree dated 02.04.1981 had rightly been declined.

4. I have considered the submissions of learned counsel for the parties. The learned Addl. Civil Judge dismissed the application on the ground that there was no reference of judgment and decree dated 02.04.1981 (Annexure P-2) in the plaint, besides, the respondents-defendants had specifically denied the ownership of the petitioner-plaintiff qua the shop in question, both the parties had led their respective evidence and the case was fixed for rebuttal evidence whereupon the petitioner-plaintiff moved application under Section 151 of the CPC for leading additional evidence to prove copy of the house tax register and certified copy of sale deed dated 03.04.1981, but the same was dismissed vide order dated 07.11.2017 and it was after dismissal of the said application that the instant application had been filed under Order 7 Rule 14 of the CPC for production of certified copy of judgment and decree dated 02.04.1981.

5. The learned Addl. Civil Judge held that the petitioner-plaintiff had failed to convince the Court that judgment and decree dated 02.04.1981 related to the property in question and further that the suit had been filed by the petitioner-plaintiff for partition and separate possession of shop measuring 15x40 feet bearing MC No.4028, whereas the judgment and decree related to two shops with Chobaras on the first floor bearing

Municipal No.1901 situated at Railway Road, Fazilka and no document had been produced by the petitioner-plaintiff to co-relate the property in dispute with property bearing Municipal No.1901.

6. Learned counsel contended that the aforementioned finding is factually incorrect since Ex.PW2-A which is on the record of the Court of the learned Addl. Civil Judge reveals that property in question i.e. property No.4028 in respect of which the suit had been filed was earlier bearing property No.1901-A besides the case was not for arguments but for evidence of defendant. Learned counsel for the respondents confirms that the case is not at the arguments stage but is listed for the evidence of the respondents/defendants.

7. Admittedly, certified copy of judgment and decree sought to be placed on record is dated 02.04.1981. As per the petitioner-plaintiff, the same was not traceable earlier being old one and it was only after great difficulty, the same was traced out and immediately thereafter application was filed. Certified copy of the judgment and decree is *per-se* admissible and judicial note of the same can be taken by the Court, besides the order of the learned Addl. Civil Judge is factually incorrect with regard to two aspects of the matter i.e. of it not having substantiated that the judgment and decree pertained to the suit property as also that the case was at the arguments stage, whereas as has been noted above house tax assessment register Ex.PW2-A which is on the record of the learned lower Court goes to show that the suit property bearing No.4028 had earlier municipal No.1901-A which is the subject matter of the judgment and decree dated 02.04.1981. Secondly as has been clarified by the learned counsel for the respondent, the case is not at the stage of arguments but is listed for

evidence of the respondents/defendants. In the circumstances, particularly in view of the fact that provisions of Order 7 Rule 14 CPC are not mandatory but directory, besides it would be in the interest of justice that certified copy of judgment and decree dated 02.04.1981 be allowed to be produced on record, impugned order dated 15.01.2018, passed by the learned Addl. Civil Judge is set aside and the petitioner is permitted to produce on record subject to payment of costs of ₹15,000/- certified copy of judgment and decree dated 02.04.1981 passed by the learned Sub Judge 1st Class, Fazilka. Needless to mention that respondents would be given an opportunity in respect thereto, in accordance with law. Payment of costs of ₹15,000/- will be a condition precedent to the petitioner being allowed to produce certified copy of judgment and decree dated 02.04.1981 on record. Nothing stated herein above would be considered as an expression of opinion on the merits of the case.

8. Revision petition allowed in aforementioned terms.

August 01, 2018

rajesh/sandeep

(B.S.Walia)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No