

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

**CR No.1839 of 2019(O&M)
Date of Decision: 29.04.2019**

**Mansha Ram (since deceased) through Tilak Raj ..Petitioner
Versus
Mangat RamRespondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Mr. R.P. Singh, Ahluwalia, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner Mansha Ram through his LR has preferred this revision petition against the order dated 21.11.2018 passed by District Judge, Ambala vide which application for leading additional evidence by way of exhibiting the certified copy of auction sale certificate dated 19.07.1941 was dismissed.

[2]. Perusal of the record would show that a suit for permanent injunction was filed by the plaintiff/petitioner for restraining the defendant from raising any construction or causing any damage or making any alteration in the suit property. Plaintiff/petitioner claimed himself to be exclusive owner of house No.2360/1 situated in Balmiki Majri, Nahan

House, Ambala City. Defendant is nephew of the plaintiff/petitioner. Defendant was allowed to occupy the house in question for a limited period as he was going to purchase his own house. Dispute arose thereafter.

[3]. In the replication filed by the plaintiff/petitioner, a new stand was taken that he had become owner of the suit property by way of purchase in open auction and auction sale certificate dated 19.07.1941 was issued by the Sub Judge, First Class, Ambala. Plaintiff only got photostat copy of said document exhibited before the trial Court.

[4]. Trial Court for want of due execution of aforesaid document discarded the same as the plaintiff had failed to connect the document with the property in question. No number of the property was mentioned in the aforesaid document. The suit was ultimately dismissed vide judgment and decree dated 10.02.2016.

[5]. An appeal was preferred by the plaintiff/petitioner before the Lower Appellate Court. Lower Appellate Court vide judgment and decree dated 19.05.2018 allowed the application under Order 41 Rule 27 CPC and remitted the case to the trial Court for the purpose of leading additional evidence. Petitioner was granted one effective opportunity for leading and concluding the additional evidence with an opportunity to the

defendant to cross-examine the witness, if any and production of evidence in rebuttal to the additional evidence. Both the parties were directed to appear before the trial Court on a particular date and trial Court was directed to record the evidence and send a report before the Lower Appellate Court.

[6]. Order dated 19.05.2018 passed by the District Judge, Ambala was challenged in CR No.3661 of 2018. In the meanwhile, petitioner could not avail the opportunity granted by the Lower Appellate Court and the trial Court by observing that the plaintiff has not availed the opportunity of leading any additional evidence, sent the report to the Lower Appellate Court. In view of above, the said revision petition was rendered infructuous vide order dated 30.08.2018.

[7]. Again an application was filed by the plaintiff/petitioner seeking to adduce evidence before the Lower Appellate Court. The same auction sale certificate dated 19.07.1941 was sought to be produced by way of additional evidence.

[8]. Learned counsel for the petitioner submitted that in the original appeal filed before the Lower Appellate Court, the certified copy of auction sale certificate dated 19.07.1941 was attached and while remanding the case to the trial Court, said certified copy was not sent before the trial Court along with the case and therefore, the petitioner could not lead additional

evidence in the form of certified copy of auction sale certificate dated 19.07.1941.

[9]. On the other hand, learned counsel for the respondent submitted that photocopy of the said document was considered by the trial Court while dismissing the suit. Since the plaintiff could not prove the execution of said document and the document itself was discrepant in terms of number of the property, therefore, after due consideration, the document was discarded and the suit was dismissed by the trial Court.

[10]. Since the photocopy of the document was already on record, therefore, the plaintiff was required to prove its execution by way of leading cogent evidence. One effective opportunity was given to the plaintiff/petitioner. He could have utilized the opportunity by summoning the original record of the auction sale certificate from the concerned quarter and by proving the original, the due execution of the document could have been proved. No such step was taken by the plaintiff before the trial Court after remand of the case. Again the same relief is sought to be pressed by showing that since the certified copy was attached with the original appeal before the Lower Appellate Court, therefore, the same could not be brought before the trial Court and for that, the plaintiff again had to obtain certified copy of the document and thereafter, sought to

tender the same by way of additional evidence.

[11]. In my considered opinion, effort is misdirected. The plaintiff could not prove due execution of auction sale certificate dated 19.07.1941 by way of summoning the original record from the concerned quarter. Plaintiff cannot be allowed to maintain the second application on the same cause of action for which indulgence was granted by the Lower Appellate Court at the first instance. The opportunity granted to the plaintiff/petitioner could not be availed by the petitioner in accordance with law. The second application on the same cause of action is not maintainable.

[12]. In view of above, this revision petition is dismissed.

29.04.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No