

CR-2335-2019 (O/M)

Date of decision : 8.4.2019

Dharam Pal and another

..... Petitioner (s)

Versus

Sanket Minor and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amit Kumar Goyal, Advocate,
for petitioners.

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KULDIP SINGH, J. (ORAL)

Impugned in present revision is order dated 28.3.2019 (Annexure-P-5), passed by learned Civil Judge (Junior Division), Sonapat, vide which plaint filed by plaintiffs-petitioners to take photograph of thumb impressions of Chandan (Chandan Singh) on the sale deed dated 6.9.1983 and upon plaint as well as compromise (Ex.C1) for the purpose of comparison, was declined.

I have heard learned counsel for petitioners and have also carefully gone through file.

In the suit, petitioners have challenged the judgment and decree dated 10.3.2012, passed in Civil Suit No. 1103 of 2009, suffered by Chandan, in favour of defendants No. 1 to 3. The perusal of plaint shows that it is nowhere pleaded in the plaint that Chandan had never appeared in the Court and suffered the decree. It has been merely stated that decree suffered by Chandan in favour of defendants is illegally, stealthily and by way of ignoring the rights of plaintiffs and defendant No. 4. Even in evidence before the Court, he had categorically admitted as correct that decree was suffered on 10.3.2012, which came to their notice in the year 2015. It is correct that decree was suffered by Chandan in favour of Sanket (Minor), Santosh Devi and Raj Bala (defendants No. 1 to 3).

The learned counsel for petitioners contends that examination in chief and cross examination is to be read as a whole. He has referred to later part of cross examination where decree is denied. It is established law that one cannot be allowed to travel beyond the scope of pleadings. In the present case, it was nowhere pleaded in the plaint that said Chandan did not suffer decree and that he was impersonated. Forgery was also not pleaded.

The learned counsel for petitioners has relied upon authority of this Court in Abdul Sattar Versus Bashir, 2006 (2) Latest Judicial Reports 352 which pertains to agreement of sale, to which defendant was a party. Further reliance is placed upon authorities of this Court in M/s Amrapali Boutique Pvt. Ltd. and another Versus Saraswati Real Estate and Investment Pvt. Ltd. and others, 1990 Civil Court Cases 32 (P and H), Kirpal Singh Verus Sardha Ram, 2004 (1) Civil Court Cases 219 (P and H) and authority of the Hon'ble Supreme Court in Nagubai Ammal and others Versus B. Shama Rao and others, 1993 (Suppl.) Civil Curt Cases 412 (SC).

The authority of this Court in Kirpal Singh's case (supra) pertains to the fact when specific issue has not been been framed on the evidence led by parties, which is not so in the present case.

The authority of this Court in M/s Amrapali's case (supra) lays down that evidence need not to be mentioned in pleadings and only material facts are required to be mentioned. It is nowhere laid down in any of the authorities that even if forgery or impersonation is not pleaded, a party can lead evidence thereon. It being so, there is no illegality or infirmity in impugned order. Thus, revision petition is dismissed.

(KULDIP SINGH)
JUDGE

8.4.2019
sjks

Whether speaking order	:	Yes	/	No
Whether reportable	:	Yes	/	No