

2023:PHHC:163744
**121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5966-2018 (O&M)
Date of decision: 19.12.2023

Dev Ram and others

....Petitioners

Versus

Abha (since deceased) and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Lajpat Sharma, Advocate for the petitioners

Ms. Nancy Vashishta and
Mr. Namit Khurana, Advocate for respondent no.2&8

Mr. Parminder Singh, Advocate for respondent no.5

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the plaintiffs prays for setting aside the interlocutory order passed by the trial court on 24.07.2018, while allowing the application filed by defendant no.2 for permission to lead the secondary evidence in order to prove two family agreements allegedly executed on 02.07.2007 and 03.07.2007. The correctness of the order passed by the trial court has been challenged on the various grounds.

2. In fact, this Court while deciding RSA-327-1989, titled as '**Madan Lal Vs. Shankar and others**' decided on 01.11.2018 held that there is no provision that mandates for filing an application for permission to lead secondary evidence in the Indian Evidence Act, 1872, in the Code of Civil Procedure, 1908, in the High Court Rules and Orders. Similarly, in CR-82-2016 decided on

10.11.2017, the Bombay High Court directed the subordinate courts to stop this practice of mandating the filing of an application for seeking permission to lead secondary evidence. Similar view was expressed by the Hon'ble Supreme Court in *Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606*.

3. Keeping in view the aforesaid facts, this Court is also of the considered opinion that the order under challenge cannot be sustained as it is erroneous. The impugned order is declared inoperative. The civil court is directed to decide the aspect of the admissibility of the secondary evidence while deciding the suit. The defendant no.2 shall be permitted to lead the relevant evidence. The trial court, while finally deciding the suit, shall evaluate such evidence. If the court comes to a conclusion that the evidence so led is secondary, the court shall decide the same after evaluating the same in accordance with the provisions of the Indian Evidence Act, 1872.

4. With these observations, the revision petition is disposed of.

5. All the pending miscellaneous applications, if any, are also disposed of.

19.12.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE