

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

112

2023:PHHC:092532

CR-8166-2018

Date of decision: 21.07.2023

ASHOK KUMAR

..Petitioner

Versus

SUDESH RANI AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Manpreet, Advocate
for Mr. J.S. Bhullar, Advocate
for the petitioner.

Mr. Parvez Chugh, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is the plaintiff in a suit for grant of decree of permanent injunction. During the pendency of the suit, the petitioner filed an application for permission to lead secondary evidence in order to prove that a copy of an affidavit/settlement deed as original is untraceable. The Court has dismissed the same on the ground that there is a difference in the title of the application as well as DDR. It has further been noticed that the application has been filed after availing 20 opportunities to lead evidence.

2. Challenging the correctness of such order, the present revision petition has been filed.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. In fact, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, this Court in **RSA-327-1989, titled as “Madan Lal Vs. Shankar and**

others”, decided on 01.11.2018, came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence.

5. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being filed under misconception, which has now attained provisions of an epidemic. Even the Supreme Court in Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606 made observations in this regard.

6. In Civil Revision No.2575 of 2020, titled as “Vinod Kumar Vs. Satbir Singh”, decided on 03.03.2021, this Court has held as under:-

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

7. With these observations, the present petition is allowed.

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

July 21st, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No