

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 3908 of 2018 (O&M)****Date of Decision: 28.11.2023**

Mayavel

... Petitioner(s)

Versus

Venu

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Sonia G. Singh, Advocate
for the petitioner(s).

Mr. Rajinder Sharma, Advocate
for Mr. Jatinder Kumar Puri, Advocate
for the respondent.

Anil Kshetarpal, J.**CM-6182-CII-2022**

1. In view of the prayer made in the application, which is supported by an affidavit, the same is allowed, subject to all just exceptions. The proposed legal representatives, named in para 2 of the application, are the Class-I heirs of respondent-Venu, who is stated to have died on 18.12.2019. They are permitted to be brought on record as the legal heirs of respondent-Venu, for the purpose of defending the revision petition.

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2. In the present revision petition, challenge is to the correctness of the order passed by the trial Court while permitting the respondent (defendant before the trial Court) to prove the documents by leading secondary evidence.

3. The learned counsel representing the petitioner submits that the respondent has failed to prove that the aforesaid documents are either not traceable or they have been lost. The learned counsel further submits that in the absence thereof, the secondary evidence could not be led.

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4. This Court has considered the submissions of the learned counsel representing the parties. In fact, in ***“Madan Lal Vs. Shankar and Others” (Regular Second Appeal No. 327 of 1989, decided on 01.11.2018)***, this Court, after relying upon the previous judgments of this Court, held that there is no provision that mandates for filing an application for permission to lead secondary evidence. Such practice is not supported by any statutory provision either in the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872, or the High Court Rules and Orders. The Bombay High Court, in Civil Revision Application No.82 of 2016, decided on 10.11.2017, has also held that there is no provision for filing an application to lead secondary evidence, in advance. In ***Dhanpat Vs. Sheoram (Deceased) through LRs and Others (2020) 16 SCC 209***, the Supreme Court held that there is no provision that makes it mandatory to file an application for permission to lead secondary evidence.

5. Keeping in view the aforesaid facts, the present revision petition is disposed of by directing the trial Court to permit the respondent to lead evidence. The Trial Court will decide the aspect of admissibility of the secondary evidence while deciding the suit. At that stage, the Court will be entitled to evaluate the evidence led by the parties and decide “Whether the plaintiff has successfully proved the existence, validity and genuineness of the documents relied upon?”

(Anil Kshetarpal)
Judge

November 28, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No