

**CR-7750-2015 (O&M)
and other connected case**

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2024:PHHC:016770

**119-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.CR-7750-2015 (O&M)

Kastoori Lal and another

....Petitioners

Versus

Ram Kumar (since deceased) through LR's and others

..Respondents

2.CR-6521-2017 (O&M)

Dharam @ Dharam Pal (since deceased) through Lrs

....Petitioner

Versus

Kastoori Lal and others

..Respondents

Date of decision: 06.02.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.N.Lohan and
Mr. Ajay Kumar Yadav, Advocates for the petitioners

Ms. Vaishali Kamboj, Advocate for
Mr. R.S.Budhwar, Advocate for respondent no.8
in CR-7750-2015 and for respondent no. 10
in CR-6521-2017

Mr. Ashok Khubber, Advocate for respondent no.9
in CR-7750-2015 and for petitioner in CR-6521-2017

ANIL KSHETARPAL, J (Oral)

1. By this order, two connected revision petitions i.e CR-7750-2015 and CR-6521-2017 shall stand disposed of.

2. The dispute in these two connected revision petitions is with respect to the correctness of the impugned order passed on 21.05.2015

through which plaintiff's application for permission to lead secondary evidence of exchange deed dated 12.07.1985 and the affidavit dated 26.06.1985 was dismissed. The plaintiff has filed a suit for the grant of decree of declaration of mandatory injunction and permanent injunction. During the pendency of the suit, he filed the application as noted above, which was dismissed. In fact, the matter, in issue is covered by previous detailed judgment passed by this Court in **Madan Lal vs. Shankar and others** (RSA 327-1989 decided on 01.11.2018) after examining the provisions of Code of Civil Procedure, 1908, the Indian Evidence Act, 1872 and the High Court Rules and Orders, this Court came to the conclusion that there is no provision for filing an application for permission to lead secondary evidence. Even Bombay High Court in CR-82-2016 decided on 10.11.2017 held that such applications are being filed under misconception, which has now become an epidemic. In '**Dhanpat vs. Sheo Ram**' 2020 SCC online SC 606, the Supreme Court has also made similar observations.

3. Keeping in view the aforesaid facts and discussion, this Court is of the considered opinion that the order under challenge is not sustainable. Hence, the same shall remain inoperative. The plaintiff shall be permitted to lead evidence. The court will thereafter decide as to whether the evidence is primary or secondary. If the court comes to a conclusion that the evidence led is secondary, at that stage, the court will also decide whether the plaintiff has successfully proved the existence, validity and genuineness of the exchange deed and receipt.

4.

With these observations, the revision petitions are disposed of.
5.

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

06.02.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE