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

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CR-5118-2017 (O&M)

Date of Decision:06.05.2025

Monty Bansal and others

... Petitioners

Versus

Master Piyus

.... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

Mr. Manoj Makkar, Advocate for the respondent.

SUVIR SEHGAL J.

1. Petitioners/defendants are in revision petition assailing order dated 19.04.2017, passed by the trial Court, whereby an application filed by the respondent/plaintiff for production of additional evidence has been accepted.

2. Counsel for the petitioners submits that the parties are related to each other. Respondent/plaintiff filed a suit for partition with consequential relief of permanent injunction pleading that Satnarayan was their common ancestor, who left behind some immovable properties and the plaintiff, who is the grandson of the deceased, has 1/8th share in the properties, which is being denied to him. He states that after the framing of the issues, an application, Annexure P-2, was filed by the plaintiff for producing an affidavit, dated 15.10.2008, executed by Murti Devi widow of Satnarayan, whereby she deposed that her sons Naveen

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Bansal, father of the plaintiff and Monty Bansal are owners in equal share of a residential house owned by her. Counsel asserts that although the plaintiff has claimed to be in possession of the photocopy of the affidavit, but the original affidavit is not in existence. By making a reference to the plaint, counsel has urged that the plaintiff has not made any reference to this affidavit in their pleadings nor has he led any evidence to prove the existence of the document and trial Court has erred in accepting the application.

3. Per contra, counsel for the respondent/plaintiff, while supporting the order passed by the trial Court, states that as the original affidavit is in the possession of the defendants, he is not in a position to produce the same. Placing reliance upon *Ravinder Singh @ Jassi Versus Indermohan Singh, 2022 (4) RCR (Civil) 181*, he contends that merely because the document had not been pleaded in the plaint, it cannot be construed that it was never in existence and it cannot be a ground to deny him an opportunity to adduce it by way of secondary evidence.

4. Having heard counsel for the parties and analyzing the documents placed along with paper book, this Court is of the view that there is merit in the revision petition.

5. Undisputedly, plaintiff has not disclosed or averred about the execution of the affidavit in the plaint. He has not referred to any evidence led by him to show that an affidavit was ever executed by his grandmother, Murti Devi widow of Satnarayan. In case, such an affidavit was ever in existence, plaintiff would have pleaded it in his plaint. It is



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well settled that evidence beyond the pleadings can neither be permitted nor considered. Reference in this regard can be made to M/s Dehar Vanshi Mini Rice Mills versus Rajender Kumar (2015) 5 RCR (Civil) 677. Furthermore, it is the mandatory requirement of Section 65 of the Evidence Act, 1872 (Section 60 of BSA, 2023) that loss of the original document must be proved before secondary evidence can be permitted. Loss can be proved by different modes one of them being that the original is not traceable. However, in the present case, plaintiff has not been able to show that he ever came in possession of the original document or that he lost the same. The application, Annexure P-2, filed by the petitioner is not supported with an affidavit, which is an essential requirement and contains vague reasons. Supreme Court in State of Rajasthan and others Versus Khemraj and others, (2000) 9 SCC 241 has held that such an application is defective. The judgment in Ravinder Singh's case (supra) relied upon by counsel for the respondent is not applicable to the facts of the present case as the execution of the original document therein was never in dispute.

6. For the foregoing reasons, revision petition is allowed. Impugned order dated 19.04.2017, passed by the trial Court is set aside and application, Annexure P-2, for producing secondary evidence filed by the respondent/plaintiff is dismissed.

06.05.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No