

Before B.S. Walia, J.

VINOD KUMAR—*Petitioner*

versus

KAILASH RANI AND OTHERS—*Respondent*

CR No.9269 of 2018

January 11, 2019

Evidence Act, 1872—S.63 and 65—Entries of judgment and decree in Civil Court register is not secondary evidence of judgment and decree.

Held that, entries in the Civil Court register do not answer the description of the term secondary evidence as given under Section 63 of the Act. In view thereof, the order passed by the learned Civil Judge (Sr. Div.), Faridkot dismissing the application on the ground that the application for proving the judgments and decree sheets dated 30.10.1979 and 02.03.1984 do not meet the yardsticks of Section 63 and 65 of the Act does not warrant any interference especially in view of it having been held in the impugned order that it would be open to the petitioner and proforma respondents/defendants to prove the entries pertaining to the judgment and decree by way of their own evidence by calling the same from the Record Room in accordance with law.

(Para 6)

Surinder Garg, Advocate
for the petitioner.

B.S. WALIA, J.

(1) Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 25.10.2018 passed by the learned Additional Civil Judge (Sr. Div.), Faridkot dismissing the application filed by the petitioner for permission to lead secondary evidence to prove the judgments and decree-sheets dated 30.10.1979 and 02.03.1984.

(2) Brief facts of the case leading to the filing of the revision petition are that the petitioner and proforma respondents/defendants moved an application seeking permission to prove judgments and decree sheets dated 30.10.1979 and 02.03.1984 by secondary evidence by way of calling the Civil Court register containing the entry and

contents of case and the decision from the record room in view of the Record Keeper having reported that the files pertaining to above said judgments and decree sheets had been destroyed in a fire which broke out in the record room in year 1984. The learned Additional Civil Judge (Sr. Div.), Faridkot dismissed the aforesaid application vide order dated 20.10.2018.

(3) Learned counsel for the petitioner contended that the impugned order dismissing the application for allowing additional evidence to prove the judgments and decree sheets dated 30.10.1979 and 02.03.1984 by calling for Civil Court register containing the entry and contents of case and decision from the Record Room was legally unsustainable as the contents of the case and decision thereon were duly entered in the Civil Court register maintained by the Court and the same was available in the Judicial Record Room and in respect of which the petitioner and proforma respondents/defendants had obtained certified copies and that in view of the record having been destroyed in fire which broke out in the Judicial Record Room in the year 1984, there was no option except to prove the judgments and decree sheets dated 30.10.1979 and 02.03.1984 except the way of secondary evidence in the manner aforesaid particularly in view of the above said judgments and decree sheets being very relevant for effectively deciding the questions in controversy in the civil suit especially in view of the fact that although the respondents/plaintiffs had challenged the said judgments and decree sheets dated 30.10.1979 and 02.03.1984 but they had not placed the copy of the same on the record.

(4) At the very outset, it needs mention here that the respondents/plaintiffs had challenged judgments and decree sheets dated 30.10.1979 and 02.03.1984 allegedly suffered by Brij Lal son of Nathu Mal, predecessor-in-interest of the respondents/plaintiffs in favour of Manohar Lal son of Nathu Ram, predecessor-in-interest of the petitioner and proforma respondents/defendants but did not place the copy of the same on the record. Likewise, there was no mention about the judgment and decree dated 02.03.1984 in written statement filed by the petitioner and proforma respondents/defendants. The petitioner and proforma respondents/defendants in their written statement contended that the judgment dated 30.10.1979 was valid and lawful. In order to determine as to whether the judgments and decree sheets dated 30.10.1979 and 02.03.1984 can be proved from the Civil Court register containing the entry and details of case as well as decision, reference is made to the provisions of Sections 63 and 65 of the Evidence Act, 1872 (hereinafter referred to as 'the Act'). Section 65

of the Act lays down that secondary evidence may be led in respect of documents inter alia when the original have been lost or destroyed etc. While Section 63 of the Act defines as to what is meant by the terms secondary evidence. Section 63 of the Act is reproduced as under:-

“63. Secondary Evidence - Secondary evidence means and includes –

- (1) certified copies given under the provisions hereinafter contained;
- (2) copies made from the original by mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.”

(5) The prayer of the petitioner and proforma respondents /defendants leading to the passing of the impugned order was for permission to prove the judgments and decree sheets dated 30.10.1979 and 02.03.1984 from the entries contained in the Civil Court register with regard to the details of the type of case etc. as well as the decision in respect thereto by requisitioning the same from the Record Room in view of the judicial record having been destroyed in a fire which broke out in the year 1984.

(6) No doubt, the entries in the civil suit register as contained on the judicial record can be utilized for the purpose of proving the passing of judgments and decree sheets dated 30.10.1979 and 02.03.1984 but the entries in the Civil Court register do not reproduce the judgments and decree sheets but only the net result. The register does not contain a narration of the contents of the judgment and decree in verbatim whereas secondary evidence means copies made from the original by mechanical process or copies made from or compared with the original or counter-parts of documents as against the parties who did not execute them or oral accounts of the contents of a document given by some person who has himself seen it. Entries in the Civil Court register do not answer the description of the term secondary evidence as given under Section 63 of the Act. In view thereof, the order passed by the learned Civil Judge (Sr. Div.), Faridkot dismissing the application on the ground that the application for proving the judgments and decree sheets dated 30.10.1979 and 02.03.1984 do not meet the yardsticks of Sections 63 and 65 of the Act does not warrant

any interference especially in view of it having been held in the impugned order that it would be open to the petitioner and proforma respondents/defendants to prove the entries pertaining to the judgment and decree by way of their own evidence by calling the same from the Record Room in accordance with law.

(7) Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

Tejinderbir Singh