

(2017) 04 SHI CK 0055
In the High Court Of Himachal Pradesh
Case No : 125 of 2017

Singho Ram and others

APPELLANT

Vs

Balbir Singh and others

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#) / [Order 8 Rule 1A\(3\)](#) - Saving of Inherent powers of Court
[Evidence Act, 1872](#), [Section 79](#) - Presumption as to genuineness of certified copies

Citation : (2017) 04 SHI CK 0055

Hon'ble Judges : Justice Dharam Chand Chaudhary

Bench : Single Bench

Advocate : Ajay Sharma

Final Decision : Dismissed

Judgement

1. Heard.

2. Order dated 7.03.2017 passed in an application under Section 151 of the Code of Civil Procedure (Civil Suit No. 164/2006) by learned Civil Judge(Junior Division), Jawali, District Kangra, H.P., is under challenge in this petition.

3. The legality and validity of the impugned order has been questioned on the grounds inter-alia that when the evidence of the defendants-respondents was ordered to be closed, the documents i.e. certified copy of judgment and decree Ext. D-1 and Ext. D-2 could have not been received in evidence without recalling the order, whereby the evidence of the respondents-defendants was ordered to be closed.

4. This Court is not in agreement with the submissions so made for the reasons firstly, that the documents viz. certified copies of the judgment and decree passed by the Civil Court in the previously instituted suit between the same parties are otherwise per-se admissible in evidence and in terms of Section 79 of

the Indian Evidence Act, the presumption of truth is attached thereto and secondly that the same being under challenge in this Court in a Regular Second Appeal, no prejudice of serious nature, is likely to be caused to the petitioners-plaintiffs.

5. The provisions contained under Rule 1A(3) of Order VIII C.P.C. extends a right in favour of the defendants to produce a document which ought to have been produced along with the written statement at a later stage, subject to the permission of the Court ceased of the matter. Such permission was sought by the respondentsdefendants Section 151 of the Code of Civil Procedure and not under Rule 1A(3) of Order VIII. Permission so sought by them has been granted by the trial Court after affording the petitioners-plaintiffs an opportunity of being heard. Merely that the application has not been filed under the correct provision of law i.e. Rule 1A(3) of Order VIII cannot be taken to defeat the right of the respondents-defendants to produce the documents in question in evidence at a later stage. Being so, there is no merit in this petition and the same as such is dismissed. Pending application(s), if any, shall also stand disposed of. An authenticated copy of this judgment be sent to learned trial Court for being taken on record.