

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

**CR No.1338 of 2015 (O&M)
Date of Decision:25.02.2015**

Kastoori Lal and another

. . . . Petitioners

Vs.

Ram Kumar through his Lrs and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Arpendeep Narula, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners are aggrieved against the order dated 11.2.2015 by which their application filed for leading additional evidence has been declined on the ground that the said application has been filed without referring to provisions of Section 66 of the Indian Evidence Act, 1872 [for short 'the Act'].

The brief facts of the case narrated by learned counsel for the petitioner, during the course of arguments, are that defendants No.1 to 7 are the members of one family and defendants No.8 to 13 are the members of the other family. Allegedly there was an exchange of land measuring 4 kanal 16 marla between the two families. Defendants No.1 to 7, after becoming the owner, by way of exchange, sold the land to Nirmal Kanta, Shanta Verma and Indu Nalwai by way of the two sale deeds. The petitioners came into picture when their suit filed against both the vendees of the aforesaid sale deeds was decreed on 16.9.1989. It was realized

later on that despite becoming the owners, the names of defendants No.8 to 13 are still being reflected in the Jamabandi/Revenue record, therefore, they decided to file suit for declaration and permanent injunction that they are the owners of the suit property on the basis of decree and averred in the suit the manner in which they acquired the ownership rights. The basic document in this case is, thus, the exchange deed, if any, but it was denied by the respondents. The petitioner then filed an application for leading additional evidence in regard to exchange deed on the ground that he does not possess the exchange deed and has got a photocopy thereof. The said application has been declined on the ground that before the filing of such application, the petitioner has to give a notice under Section 66 of the Act to the respondents, who are in possession of the said original document.

Learned counsel for the petitioner has tried to argue that there is an exception in proviso in Clause 2 of Section 66 of the Act, which says that when, from the nature of the case, the adverse party must know that this notice is not required to be given, the notice may be dispensed with.

The argument may be attractive but the fact remains that the petitioners are alleging themselves to be the owners of the property in dispute on the basis of a decree suffered by the persons, who have purchased the property from defendants No.1 to 7, who have further got the property from defendants No.8 to 13 by way of exchange. Thus, the document of exchange, either in original or a certified copy must come from the possession of defendants No.1 to 7 or defendants No.8 to 13 and for that purpose, the petitioner was required to serve a notice in terms of

Section 66 of the Act upon them asking them to produce the said document in Court as they are also party to the suit and in case of their refusal or otherwise, the Court may consider the application of the petitioner for leading additional evidence.

Faced with this situation, learned counsel for the petitioner has submitted that he may be permitted now to serve a notice upon the respondents under Section 66 of the Act as his application filed under Section 65 of the Act has been dismissed, non-suited him on the ground of advance notice.

After hearing learned counsel for the petitioner and examining the record, I am of the considered opinion that there is no error committed by the learned Court below while dismissing the application but at the same time, the petitioner can still be granted permission to serve a notice, as required under law, upon the persons in whose possession the document may be and then may take up his remedy in accordance with law.

In view of the aforesaid observations, the present revision petition is disposed of.

25.02.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**