

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CR 1414 of 2015

Date of Decision: April 23, 2015

Baldev Singh

.....Petitioner

Vs.

Kaur Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.R.S. Dhaliwal, Advocate  
for the petitioner.

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**M.M.S. BEDI, J. (ORAL)**

This is defendant's revision petition in a suit filed by his brother plaintiff Kaur Singh, respondent No.1 for partition of a residential house mentioned in the heading of the plaint and for injunction restraining the petitioner from further alienating the house beyond half share without getting the same partitioned. The defendant- petitioner in his written statement has taken up a preliminary objection of law and fact that the plaintiff- respondent No.1 has sold his share in another house which was also co-owned by the parties to Raj Kumar son of Chiranji Lal on receipt of entire consideration. The defendant- petitioner in order to substantiate the plea taken in the written statement, appears to have produced Raj Kumar,

purchaser of half share from plaintiff in another house as DW2. During the course of examination-in-chief, he had produced the said panchayati agreement of sale (copy annexure P-4) on the record which was exhibited as Ex.D2 but on account of objection having been raised by plaintiff-respondent No.1, it was ordered to be read as “**Mark D1**” instead of “**Ex.D2**”.

Counsel for the defendant- petitioner has submitted that the trial Court ought to have exhibited the said document which admittedly is unregistered. Counsel for the petitioner submits that the document should have been exhibited and its admissibility could have been decided subsequently at the time of final decision.

I have heard learned counsel for the petitioner and I am of the opinion that mere exhibiting or marking of a document during the course of trial is not a final decision regarding the authenticity, admissibility, legality and relevancy as per the provisions of law and Evidence Act. It is always open to the trial Court to exhibit a document which is marked during the course of trial depending upon the material available on the record.

With the assistance of learned counsel for the petitioner, I have tried to appreciate the admissibility of document annexure P-4, agreement of sale by virtue of which the plaintiff- respondent No.1 had, allegedly transferred his ownership to Raj Kumar on receipt of entire sale consideration even by delivering possession. The following controversies arise on perusal of the document annexure P-4:-

- i) Whether the document is merely an agreement of sale or it is a sale transaction transferring absolute rights of title and possession in favour of Raj Kumar, affecting the legal rights of the parties to the litigation?
- ii) Whether an agreement of sale containing a stipulation that possession has been delivered could be taken in evidence in view of the provisions of Section 17 (1) (a) of the Indian Registration Act?
- iii) Whether document annexure P-4 could have been taken in evidence without imposing any penalty as per provisions of Section 35 of the Stamp Act?
- iv) Whether the document annexure P-4 could be read as a relevant document in the light of provisions of the Evidence Act?
- v) Whether the document sought to be exhibited / marked is an authentic, admissible and relevant document for the purpose of adjudication of the right/ rival rights of the contesting parties?

A perusal of the examination-in-chief and cross-examination of Raj Kumar indicates that the document Ex. Mark D-1 which is sought to be taken on record as Ex.D2 was prima facie considered to be under-stamped as

such it was ordered to be marked as D1. There does not appear to be any illegality in the directions passed by the trial Court that the document should be prima facie read as **Mark D1**. The only irregularity which seems to have been committed by the trial Court is that the objection in context to its authenticity, relevancy and admissibility should have been kept open by the trial Court to be contested during the course of trial or at the time of final decision of the suit without prejudice to the rights of the parties. The above said impropriety is a procedural inadvertent mistake.

In view of the said circumstances, it can be ordered that the marking of document as Mark D1 will be open for consideration at the time of final arguments subject to the other material available on record. In case the trial Court at final stage or during the course of the trial at any stage arrives at a conclusion that the document mark D1 deserves to be treated as an exhibited document, it will be open to the said Court to permit the exhibition of the document as Ex.D.2.

With the above observations, it is ordered that the authenticity, admissibility, legality and relevancy of the document mark D1 will be left open to be considered at a subsequent stage before or at the time of decision of the suit.

Disposed of in the above terms.

April 23, 2015  
sanjay

(M.M.S.BEDI)  
JUDGE