

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1963 of 2015 (O&M)
Date of decision: 7.7.2015

Bhag Singh (deceased) through LR and others

.. Petitioners

v.

Kashmira Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gurcharan Dass, Advocate for the petitioners.

Mr. Gulzar Mohd., Advocate for respondents No. 1 and 2.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 16.2.2015, passed by the learned court below, whereby the application filed by the petitioners for leading secondary evidence to prove the agreement dated 23.10.1987, was dismissed.

Learned counsel for the petitioners submitted that the petitioners filed suit for declaration to the effect that the plaintiffs along with respondents No. 1 and 2 are joint owners in possession of electric connection/tubewell bearing account No. H-2 556 of 3 B.H.P. It was in terms of an agreement signed between the parties on 23.10.1987 scribed by Dewan Chand, Deed Writer, the entry for which was made at Sr. No. 467 in the register of the Deed Writer. As original agreement was handed over to the respondents and despite application for production, the same was not produced by them, application for proving the same by way of secondary evidence was filed, which was wrongly dismissed. The entry in the register of the Deed Writer provides for contents of the agreement and the same was signed by the parties. Once the existence of the agreement is proved and the

original is not available, the petitioners be permitted to prove the same by leading secondary evidence. The next date of hearing is stated to be 30.7.2015.

Learned counsel for respondents No. 1 and 2 submitted that the plaintiffs claimed that certain rights had been conferred on them by way of the agreement, hence, to claim that the original thereof was with the respondents-defendants, is not acceptable. The petitioners have neither produced photo or certified copy thereof. At the time of presentation of the suit, all the documents relied upon were to be produced. On failure, at this stage, it cannot be permitted. He further submitted that the agreement and the entry in the register are two different documents having different evidentiary value. The entry in the register cannot be said to be secondary evidence of the agreement, as the same is independent evidence. There is nothing wrong in the order passed by the court below declining permission to produce the secondary evidence.

Heard learned counsel for the parties and perused the paper book.

The suit of the petitioners-plaintiffs is based upon the agreement dated 23.10.1987, vide which water from tubewell was to be shared. It is specifically pleaded that the same was scribed by Dewan Chand, Deed Writer and entry to that effect was made in his register at Sr. No. 467. Initially, the petitioners filed application seeking a direction to the respondents-defendants to produce the agreement. However, the defendants having denied the possession thereof, the application was disposed of on 26.3.2014 with the observation that in case it is ultimately found to be in possession of the defendants, adverse inference shall be drawn. The petitioners have produced photo copy of the register of the Deed Writer where at Sr. No. 467, entry regarding the aforesaid agreement has been made. Though the petitioners claim that they want to prove the agreement by producing the Deed Writer's register in secondary evidence, however, learned counsel for respondents No. 1 and 2 stated that the agreement and the entry in the Deed Writer's register are two different sets of evidence having their own evidentiary value. The register of the Deed Writer cannot

be said to be secondary evidence of the agreement.

Be that as it may, considering the fact that the petitioners seek permission to produce Deed Writer's register in evidence, the original of which is also available, which may or may not be considered as secondary evidence of the agreement, the learned court below shall permit the petitioners to produce the same in evidence, however, the evidentiary value thereof shall be considered at the time of final disposal of the suit.

For the reasons mentioned above, the petition is allowed. The impugned order passed by the learned court below is set aside.

(Rajesh Bindal)
Judge

7.7.2015
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