

**CR-2398-2015 (O&M)**

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

**CR-2398-2015 (O&M).  
Decided on: April 7, 2015.**

**Bimla Devi**

**..... Petitioner(s)**

**Versus**

**Bashambar Dass and others**

**..... Respondent(s)**

**\* \* \***

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

**PRESENT Mr.R.S.Thakur, Advocate,  
for the petitioner.**

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

This is defendant's revision petition against the order Annexure P5 dated 30.1.2015 dismissing the application filed by the petitioner and other defendants for leading secondary evidence regarding an unregistered sale deed alleged to have been executed on 4.12.2002 by Ishar Dass in favour of Diwan Chand father of defendants regarding 1 marla of land for consideration of Rs.99.90 paisa claiming that the original sale deed was not traceable as it was in possession of Diwan Chand who has since expired. Photocopy of the sale deed has been sought to be placed on record seeking permission to establish the same by way of secondary evidence. It is pertinent to mention that the plaintiff-respondent No.1 has filed a suit for separate possession by partition of a house mentioned in heading of the plaint being the brother of defendant-

## **CR-2398-2015 (O&M)**

petitioner. The defendant- petitioner has taken a plea that the suit is bad for partial partition as their deceased father Diwan Chand was owner of 1 marla of land purchased by him vide an unregistered sale deed for consideration of Rs.99.90 paise.

The trial Court has dismissed the application on the ground that the sale deed has not been referred to in the written statement.

Counsel for the petitioner has submitted that an implied reference to the sale deed regarding sale of one marla of land in favour of Diwan Chand has been made in the written statement. The said contention has been rejected by the trial Court.

I have heard the learned counsel for the petitioner and considered the contentions raised in context to the controversy involved between the parties. The defendant-petitioner wants to defeat the rights of partition of the plaintiff-respondent No.1 raising a plea that suit is bad for partial partition, all the properties belonging to Diwan Chand having not been included. In order to establish the said legal plea, the defendant- petitioner seeks to produce the above said sale deed by establishing the same by producing the secondary evidence.

Section 65 of the Indian Evidence Act provides for the cases in which secondary evidence can be produced pertaining to the documents enlisted therein which reads as follow: -

*“65. Cases in which secondary evidence relating to*

*documents may be given.*

*Secondary evidence may be given of the existence, condition or contents of a document in the following cases:--*

*(a) when the original is shown or appears to be in the possession or power- of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;*

*(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;*

*(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;*

*(d) when the original is of such a nature as not to be easily movable;*

*(e) when the original is a public document within the meaning of section 74;*

*(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;*

*(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.*

*In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.*

*In case (b), the written admission is admissible.*

*In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.*

*In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”*

The photocopy of the unregistered sale deed which is sought to be proved to defeat the rights of the plaintiff-respondent No.1 does not fall within any of the categories of the documents mentioned hereinabove. Besides this, the specific reference to the unregistered sale deed has not been made in the pleadings. The evidence sought to be produced appears to be beyond pleadings and with an objective to defeat or delay the rights of the plaintiff-respondent No.1.

No ground is made out for interference in the impugned order.

The petition is dismissed.

**April 7, 2015.**  
**rka**

**(M.M.S. BEDI)**  
**JUDGE**