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

CR No.327 of 2013 (O&M)

Date of decision: March 10, 2015

Mandir Bawa Teekam Dass and another

.....Petitioners

Versus

Hardev Singh though his Lrs and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S. Salar, Advocate
for the petitioners.

Mr. Vijay Sharma, Advocate
for the respondents.

SABINA, J

Petitioners have filed this petition challenging the part of the order dated 07.01.2013, whereby application moved by the petitioner for permission to lead secondary evidence qua unregistered documents, was dismissed.

I have heard learned counsel for the parties and have gone through the record available on the file carefully.

Petitioners have filed suit for possession of the land in question and for permanent injunction restraining the defendants from alienating/mortgaging/transferring or creating any sort of charge over the property in dispute. During the pendency of the suit, petitioner moved an application under Section 65 of the Evidence Act, 1872 ('Act' for short) for permission to lead secondary evidence qua following documents:-

- “i. A writing dated 27.11.09 B.K. i.e. 10.3.1946 A.D, executed in by Mahant Hari Dass Chela Harnam Dass Dera bawa Teekam Dass, Nabha in favour of plaintiff.*
- ii. A registered Lease Deed Vasika No.953 dated 12.11.1957 A.D. And Vasika No.40 dated 09.06.1970 A.D, both executed by Mahant Hari Dass Chela Harnam Dass in favour of defendants.*
- iii. A General Power of Attorney Vasika No.34/4 dated 17.4.1961, executed by Mahant Hari Dass in favour of Arjan Dass father of the plaintiff Mahant Bhagwat Dass.*
- iv. A writing dated 03.04.1979 in which plaintiff Mahant Bhagwat Dass was appointed the Mahant of Dera Bawa Tikam Dass.”*

Trial Court while partly allowing the said application,
has held as under:-

“After hearing the arguments of ld.counsel for both the parties, this court is satisfied that it contention of the plaintiffs that above mentioned original documents have been stolen on 15.12.2012 at Court complex Nabha and have not been traced despite efforts and now plaintiffs want to prove the copies of same by way of secondary evidence but it is pertinent to mention here that out of the documents mentioned only documents mentioned as serial no.ii and iii are registered documents and permission to prove the copies of documents can only be given qua the registered documents and copies of unregistered documents cannot be proved by way of secondary evidence. Therefore, in the interest of justice, the present application is allowed to the extent that plaintiffs are permitted to prove the copies of only registered documents i.e. the registered Lease Deed Vasika No.953 dated 12.11.1957 A.D. And Vasika

No.408 dated 09.06.1970 A.D, both executed by Mahant Hari Dass Chela Harnam Das in favour of defendants and General Power of Attorney Vasika No.34/4 dated 17.4.1961, executed by Mahant Hari Dass in favour of Arjan Dass father of the plaintiff Mahant Bhagwat Dass, by way of secondary evidence. Application disposed of accordingly. However, observations made in this order shall have no effect on the merits of the present case at the time of final disposal.”

Learned counsel for the respondents has submitted that the writing dated 03.04.1979 was not attached by the petitioners at the time of filing the plaint or at the time of settlements of issues. Hence, the said documents could not be allowed to be proved by the petitioners by way of secondary evidence.

Although, a perusal of the plaint shows that it has not been specifically averred in the plaint that the photocopy of the writing dated 03.04.1979 had been attached with the plaint, but a perusal of the application filed by the petitioners under Section 65 of the Act (Annexure P-2) reveals that in Para-4 of the said application, it had been specifically mentioned that photostat copy of the unregistered documents had already been produced by the petitioners in the Court. The said application was filed in December, 2012. In reply to the said application, the fact that the photocopies of the unregistered documents were already available on record, had not been denied by the respondents. Thus, it can be presumed in view of the pleadings of the parties, the writing dated 03.04.1979, was already

available on record before filing of the application under Section 65 of the Act.

Learned counsel for the petitioners has placed reliance on ***Indian Overseas Bank versus M/s Shayama & Co.***, 1993(2) R.R.R. 44, wherein it was held as under:-

“10. Again production of documents by way of secondary evidence cannot be denied merely on the ground that the documents sought to be produced are either not registered documents or 30 years old. This is not the requirement of Section 65 of the Evidence Act.”

Thus, the unregistered documents could also be allowed to be proved by way of secondary evidence. Hence, the learned trial Court had erred in dismissing the application qua unregistered documents on the ground that the said documents could not be permitted to be proved on record by way of second evidence being unregistered.

Accordingly, this petition is allowed. Impugned order whereby application moved by the petitioners to the extent that they were not permitted to prove the unregistered documents by way of secondary evidence, is set aside. Consequently, application moved by the petitioners (Annexure P-2) is allowed subject to all exceptions/proof of loss of the said documents.

**(SABINA)
JUDGE**

March 10, 2015
m.singh