

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3494 of 2014

Date of decision : December 18, 2015

Gurinderpal Singh Grewal

..... Petitioner

Versus

Parampreet Singh Grewal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Jaswant Singh, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner is aggrieved of the order whereby the application filed by the respondents under Section 65 of the Indian Evidence Act, 1872 to lead secondary evidence to place on record the certified copy of the registered adoption deed dated 10.2.1987 and photocopy of the agreement dated 13.2.1987 by way of secondary evidence has been allowed.

Mr. Pankaj Bali, learned counsel appearing on behalf of the petitioner submits that he confines his argument with regard to permission granted by the trial court viz-a-viz secondary evidence of agreement dated 13.2.1987 on the premise that the trial court without giving liberty to the respondents-plaintiffs to prove existence and loss has allowed the same to be produced on record by way of secondary evidence, the certified copy of the registered adoption deed dated 10.2.1987 and photocopy of the agreement dated 13.2.1987. He further submits that the agreement is nothing but an undertaking by the adopting father that the respondent-plaintiff was adopted on 10.2.1987 to the effect that he has no right to sell and alienate the property. The petitioner is none else but a bona fide purchaser of the property sold by Mohan Singh Grewal vide sale deed dated 6.5.2003. The essential requirement to prove the documents by way of secondary evidence is first to prove its existence and loss. He thus, prays that the impugned order is not sustainable and is liable to be set aside.

Mr. Kanwaljit Singh, learned Senior counsel assisted by Mr. Jaswant Singh, Advocate appearing on behalf of the respondents submits that no doubt that the trial court has granted permission to the respondents-plaintiffs to produce on record the aforementioned documents by way of secondary evidence by further holding that until and unless the same is not proved, the secondary evidence cannot be looked into. The photocopy of the original is permissible as per the provisions of Section 65 (a) of the Indian Evidence Act, 1872.

I have heard learned counsel for the parties and appraised the paper book.

Shorn of the facts noticed above and as well as the rival contentions of the parties, I am of the view that trial court should not have embarked upon a path by straight away granting liberty to the respondents-plaintiffs to bring on record the aforementioned documents by way of secondary evidence, particularly with regard to the agreement dated 13.2.1987. Since the adoption deed is a registered document, there is no dispute to the proposition of law that certified copy is permissible by way of secondary evidence and the certified copy of the adoption deed which is sought to be brought on record is a registered document. Viz-a-viz agreement dated 13.2.1987 it has been stated in the application that it is a photocopy of the original.

I am of the view that trial court should not have straight away allowed the aforementioned agreement to be brought on record by way of secondary evidence but ought to have put the onus to prove the existence and loss, much less destruction.

Keeping in view the aforementioned facts, the impugned order viz-a-viz agreement to sell allowing the respondent-plaintiff to lead evidence is modified and it shall be read as that the respondents-plaintiffs shall first prove the existence and loss of the agreement to sell dated 13.2.1987 thereafter the same shall be produced on record in accordance with law subject to mode and proof, much less admissibility.

With the aforementioned observations the

impugned order stands modified. The revision petition is disposed of accordingly.

**(AMIT RAWAL)
JUDGE**

**December 18, 2015
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