

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

CR No. 393 of 2013 (O&M)

Date of decision: 16.11.2015

Sukhwinder Singh

...Petitioner

versus

Sarmukh Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anil Chawla, Advocate for the petitioner.

Mr. Anupam Bhardwaj, Advocate for the respondents.

K.Kannan, J.

The revision is brought at the instance of the defendant against the order declining to permit the defendant to receive the photocopy of the document purporting to operate to relinquish the right in immovable property after receiving Rs. 25,000/- as consideration. The defendant's plea is that the plaintiff had already received Rs. 25,000/- in a family settlement and relinquished his right and given the fact of relinquishment through an affidavit, the original of what has not been available with him. The Court has declined the permission.

I will find no scope for intervention on account of two serious legal objections that would operate against the defendant which have not rested merely on proof of any of the circumstances that are available under Section 65 of the Evidence Act (in short the 'Act'). The said Section will allow for production of secondary evidence under any of the 10 circumstances set out from a to j of the Act. The objection is much more fundamental. The right in immovable property of worth more than Rs. 100/- cannot be relinquished otherwise than through a registered document under Section 17 of the Registration Act of 1948. The plaintiff does not desire the expression relinquishment and would want to employ euphemism that the plaintiff has stated that he or his LRs would not claim any legal right in property after taking Rs.

25,000/-. That precisely is relinquishment, for, the non-testamentary instrument which Section 17 (b) contemplates to require compulsory registration is wide enough to operate to “limit or extinguish whether any present or in future any right or title or interest” Cause (c) under Section 17 includes even an acknowledgment of receipt or payment of any consideration that is to operate for such “limitation or extinction” Clause (e) is more generic in that it states any non-testamentary instrument that purports to operate to limit or extinguish the value of immovable property over Rs. 100/-. The counsel argues that it is possible to a party to relinquish the property by way of family settlement and such an instrument does not require registration. The partition could be brought about orally in family settlement and mutual adjustment of rights could operate by various claims over properties allotted to the other persons may be limited or extinguished but if a right is sought to be extinguished by receipt of consideration of Rs. 25,000/-, by merely employing expression that it is family settlement taken by circumvent expression under Section 17 the requirement of registration could not be avoided. If it were to be considered as document that would extinguish the right of a party, it would required to be written on stamp papers, for, the Stamp Act stipulates a specific Article 5 Schedule 1A of the Stamp Act as applicable. The document which is not adequately stamped but brought in the form of an affidavit on a plain paper is inadmissible for whatever purpose under Section 35 of the Stamp Act. The provision for collection of stamp duty as prescribed under Section 35 itself will be only on the production of the original unstamped paper. But, if only a photocopy is available, stamp duty penalty can not be collected and revalidation become impossible if it is justifiable in any circumstances under Section 35 will be barred. This decision has been brought in the decisions of the Supreme Court in State of Bihar Vs. M/s Karam Chand Thapar and Broth. Ltd. 1962 AIR (SC) 110 and Hari Om Aggarwal Vs. Prakash Chand Malviya,

2007 (8) SCC 514. The order declining to permit the petitioner to submit secondary evidence of the alleged affidavit said to have been executed by the plaintiff was rightly rejected, although for more more and better reasons as detailed above, which have not been set forth in the order.

I find no cause for intervention and dismiss the revision as incompetent. These observations which I have made about the tenability of the release are for the purpose of entertaining the document which the defendant wanted to file and the Court will consider the defendant's claim independently of the observations but still needless to state within the parameters of law.

(K.KANNAN)
JUDGE

16.11.2015

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