

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

CR No.8505 of 2015.

Date of Decision: 14.12.2015.

Vishnu and others

....Petitioners.

VERSUS

Shakuntla and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.K. Tripathi, Advocate for the petitioners.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 26.11.2015 passed by learned Additional Civil Judge (Senior Division), Pataudi, vide which the application under Section 63 of the Indian Evidence Act filed by respondents-plaintiffs seeking permission to lead secondary evidence, was allowed.

As it appears from the record, a suit for declaration with consequential relief of permanent injunction has been filed by the respondents-plaintiffs. During evidence, the plaintiffs filed an application invoking the provisions of Section 63 of the Indian Evidence Act for seeking permission to lead secondary evidence for proving the agreements

dated 15.01.1992 and 10.02.1992. The application was opposed by the petitioners-defendants. Finding that the existence of the documents-agreements was not in dispute, learned trial Court allowed the application of the respondents. Feeling unsatisfied, the petitioners have filed the instant civil revision.

The submissions of learned counsel representing the petitioners have been considered.

Learned counsel for the petitioners argued that in a previously instituted suit, the agreements dated 15.01.1992 and 10.02.1992 were tendered in evidence but learned trial Court as well as learned first appellate Court had given a consistent finding that the said agreements are fake documents. In view of said findings, the same agreements cannot be allowed to be proved in the instant case by way of secondary evidence.

Admittedly, as mentioned in the impugned order and also as submitted by learned counsel for the petitioners the original agreements dated 15.01.1992 and 10.02.1992 were tendered in evidence in a previously instituted suit between the parties. The Regular Second Appeal No.1222 of 2002 filed against the judgment and decree passed in that suit is pending before this Court. In other words, the matter with regard to legality/ validity of the agreements has not attained finality and is still subjudice. The original agreements are stated to be part of record of the previous suit. The plaintiffs intend to produce the said agreements in evidence in the present case also. Such being the position, they can tender in evidence the agreements only by way of secondary evidence. As far as the question of

genuineness/legality of the agreements is concerned, as already mentioned above the said matter is already subjudice before this Court and will be decided at the time of decision of the relevant Regular Second Appeal.

Finding no illegality or perversity in the order of learned trial Court calling for intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

14.12.2015.
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