

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1329 of 2016 (O&M)
Date of decision : February 23, 2016

Y.K.M.Biothech now Rossel Biotech Limited

..... Petitioner

Versus

Lala Ram and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pavan Malik, Advocate
for the petitioner.

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-defendant No.2 is aggrieved of the order dated 10.2.2016 whereby exercising power under Section 165 of the Indian Evidence Act, 1872 directing for production of the original record viz-a-viz death certificate of father of the respondents-plaintiffs.

Learned counsel appearing on behalf of the petitioner-defendant No.2 submits that evidence has already been closed only photocopy of the death certificate has been proved on record. In essence, the respondents-plaintiffs have failed to discharge the onus. Such exercise of power shows filling up of a lacuna, which is no admissible in law.

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

In view of the aforementioned facts, there is no illegality in the order. The operative part of the order reads thus:-

“At this stage, although it is acknowledged that burden of proving the case lies upon the plaintiff who is duty bound to lead cogent and convincing evidence so that his case should stand on his own legs, however, in peculiar circumstances like this one, it would be in the interest of justice that the record of death of Mam Chand should be brought before the Court in order to ascertain whether the impugned GPA is a result of fraud or the photocopy of death certificate produced before the Court by the plaintiff is a result of fraud. It is also acknowledged that the Court should not become party to the litigation but it has been settled by the Hon'ble Supreme Court of India that the duty of a Judge is to administer substantial justice and is not to allow miscarriage of justice on technical grounds. Moreover, ample power has been conferred upon this Court by virtue of Section 165 of the Indian Evidence Act to take any step which could assist the court in administration of justice.

Section 165 of the Indian Evidence Act provides that:-

165. Judge's power to put questions or order production.—*The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:*

In view of the above said provisions, it is clear that this Court is fully empowered to summon any document

before the Court which is required for delivering justice to the parties. Moreover, justice should not only be done, but it should actually be seem to be done.

In view of the discussion above, this Court deems it fit and appropriate to summon the concerned clerk from the office of Registrar, Birth and Death, Rewari along with the death record of Mam Chand son of Mollhar Ram bearing certificate No.330 dated 27.7.1993 for 19.2.2016. Summons be issued to the witness promptly.”

The suit pertains to challenging the sale deed alleged to have been executed by father of the plaintiff in the year 1996 whereas it has been pleaded that father of the plaintiff died on 25.7.1993 which is suspicious, though photocopy of the death certificate has been proved on record.

In my view, the court below has rightly exercised power under Section 165 of the Indian Evidence Act, 1872 viz-a-viz ascertaining the death certificate and such exercise does not tantamount to filling up of a lacuna.

With the aforementioned observations, I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

**(AMIT RAWAL)
JUDGE**

**February 23, 2016
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