

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.2949 of 2014(O&M)
Date of Decision:18.1.2016

Darshan Singh and another

---Petitioners

vs.

Harkesh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pankaj Sharma, Advocate
for the petitioners

Mr. S.S.Rangi, Advocate
for the respondents

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

Rekha Mittal,J.

Challenge in the present petition is laid against order dated 6.12.2013 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Kharar whereby the application of the petitioners for issuance of direction to respondent No.1/defendant to produce on record the original family settlement dated 16.10.2000 in regard to the suit house and if respondent No. 1 does not produce the same, the petitioners/plaintiffs be

permitted to prove the said document by way of secondary evidence, has been dismissed.

Counsel for the petitioners contends that the petitioners have filed a suit for separate possession by way of partition of half share out of residential house, detailed in the head note of the plaint. One of the contentions of the petitioners is that on 16.10.2000, all the legal heirs of Ghanaiya Singh i.e. Mehar Singh and Balbir Singh, plaintiffs, legal heirs of Gian Singh, Prem Kaur widow of Balbir Singh son of Ghanaiya Singh entered into a family settlement whereby the house in question was given to the plaintiffs and defendants and other house in possession of Balbir Singh was given to Balbir Singh, Mehar Singh and Prem Kaur. The original family settlement dated 16.10.2000 is in possessions of the respondents but they have refused to produce the same. It is further argued that as the respondents-defendants have failed to produce the original family settlement, there is no alternative with the petitioners except to prove the said family settlement by way of secondary evidence as the petitioners are in possession of xerox copy of the said document. It is further argued that the learned trial court has dismissed the application without assigning any valid reason because the question of existence of original and its possession with respondent/defendant No. 1 is required to be proved at the time of proving the document by way of secondary evidence.

Counsel for the respondents has supported the impugned order with the submissions that as there is no materials on record to prove existence of the original document, the petitioners cannot be permitted to prove the document by way of secondary evidence.

I have heard counsel for the parties and perused the records.

Section 65 of the Indian Evidence Act, 1872 (for short “the Evidence Act”) provides for contingencies/cases in which secondary evidence relating to documents may be given. Clause (a) of Section 65 of the Evidence Act says that when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it, permission may be granted to prove such a document by way of secondary evidence.

The petitioners have placed on record a photocopy of the said family settlement (Annexure P/5). It is the specific plea of the petitioners that the original family settlement is in possession of respondent No. 1. Respondent No. 1 filed reply to the application but it appears that the said reply is not supported by an affidavit in regard to respondent No. 1 being not in possession of the said document.

Without going into the question of existence of the original family settlement and its possession with respondent No. 1, lest it may cause prejudice to either of the parties in the proceedings pending before the trial court, the petition is disposed of and the petitioners are permitted to prove the family settlement dated 16.10.2000 by way of secondary evidence but subject to the conditions that the petitioners would prove that such family settlement in original existed and the original document is in possession of

respondent No. 1.

In view of what has been discussed hereinabove, the petition stands disposed of. However, nothing stated in the order will prejudice the decision of the case on merits.

(Rekha Mittal)
Judge

18.1.2016
paramjit