

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.320 of 2013

Date of Decision.20.01.2016

Bal Krishan s/o Late Sant Ram

.....Petitioner

Vs.

Shiv Kumar and another

.....Respondents

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate
for the petitioner.

Mr. Satbir Rathore, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The revision petition is against the order rejecting the petition filed under Section 65 of the Indian Evidence Act for reception of a document which is purported to be a family arrangement amongst the members of the family. The plaintiff's contention is that the original document is not with him and it is in the custody of the defendants and the defendants have contended that there is no such family arrangement in the manner spoken to by the plaintiff and that the document even if it is true, is unstamped, unregistered and cannot be received in evidence. I have gone through the recitals of the document. The recitals of the document are as under:-

“We, Mansa Devi, Bal Krishan Sharma, Shiv Kumar Sharma
and Ashok Kumar have unanimously decided as under:-

1. The value of the land is assessed as Rupees Sixteen Lakhs and of Hotel is Rupees Twenty Four Lakhs. Khokha will be divided into four parts. The rent of this would be collected by mother (Mai Ji).

2. The partition of the Hotel will be done unanimously between Ashok and Shiv Kumar. The condition of this partition is that the wall of the Hotel will be constructed from joint account. To make both parts equal, the expenses will be joint. The decision of parts would be taken by draw.

3. The decision of the land situated in Mukerian is done like this which is mentioned below:-

1. The land situated in Mukerian will be divided equally between Smt. Mansha Devi and Bal Krishan.

2. Ashok Kumar and Shiv Kumar will pay Rupees Two Lakhs to Sh. Bal Krishan. Both of them will get an F.D. of Rupees Two Lakhs done in the favour of Smt. Mansa Devi. She will take only interest of that amount.

3. The contract of land which is in the share of mother (Mai Ji) will be given to Bal Krishan. Bal Krishan will pay the amount of her share six months in advance.

4. Bal Krishan will be responsible for all transactions of the land. Shiv Kumar and Ashok Kumar will be responsible for the affairs of Hotel (Dhaba).

5. Shiv Kumar and Ashok Kumar will complete the transactions before the end of the month of June. They will give F.D and Rupees Two Lakhs to Bal Krishan in the end of June.

Note: The land and F.D in favour of mother (Mai Ji) will be divided between all the three brothers equally. The house situated opposite will be used by Ashok Kumar and Shiv Kumar. The house situated in the land in Mukerian will be used by mother (Mai Ji) and Bal Krishan.

Signatures

(i) Smt. Mansa Devi	L.T.I Mansa Devi
(ii) Sh. Bal Krishan Sharma	Sd/- Bal Krishan Sharma
(iii) Sh. Shiv Kumar Sharma	sd/- Shiv Kumar Sharma
(iv) Sh. Ashok Kumar Sharma	sd/Ashok Kumar

Witnesses before whom decision taken:

(i) Sh. Moti Ram Sharma	sd/- Moti Ram
(ii) Sh. Ami Chand Sharma	sd/- Ami Chand Sharma
(iii) Sh. Ravi Sharma	sd/- Ravi Sharma
(iv) Smt. Ramesh Sharma	sd/- Ramesh Sharma
(v) Smt. Santosh Sharma	sd/- Santosh Sharma
(vi) Smt. Pinki Sharma	sd/- Pinki Sharma

This decision was taken on 13th Feb, 1995.”

2. This merely constitutes agreement to make partition in a particular fashion and pay certain sums in future and it does not itself bring a partition between the parties dividing the properties. I will not find any objection regarding admissibility or reception of the document for non-registration as worthy of substance. The counsel for the respondents relies on the judgments of the Supreme Court in *Hariom Aggarwal Vs. Prakash Chand Malviya 2007(8) SCC 514* and *Smt. J. Yashoda Vs. Smt. K. Shobha Rani 2007(5) SCC 730* and judgment of

this Court in *Hari Singh Vs. Shish Ram 2002(4) RCR (Civil) 554* with reference to admission of unregistered and unstamped document. Where the document does not create a partition of properties between the parties, there will be no applicability of these judgments in this case. I direct the document to be received and the respondents will have the liberty to cross-examine and elicit information that the so-called ground for receiving the original itself does not exist and it is merely a fabrication and further that the document if it is received cannot allow for the plaintiff to seek for declaration in the manner contended by him. These are matters to be considered at the time of trial by the trial judge and cannot be taken at the threshold to knock out to be a document which is sought to be rendered in evidence.

3. The impugned order is set aside and the revision petition is allowed on the above terms.

(K. KANNAN)
JUDGE

January 20, 2016
Pankaj*