

214.

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

Civil Revision No.3329 of 2014

Date of decision:22.03.2016

Sudha Rani and others

... Petitioners

versus

Udai Singh and others

.... Respondents

II. Civil Revision No.3332 of 2014

Sudha Rani and another

... Petitioners

versus

Udai Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.R.S. Mamli, Advocate,
for the petitioners.

Mr. H.R. Bhardwaj, Advocate,
for respondents 1 to 3.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. Both the revisions are connected and they are disposed of by a common order.

2. The petitioners have brought upon themselves an adverse order unnecessarily when the document ought to have been

received without much fuss and should have only proceeded for consideration of whether it was genuine or not, a test which should have been undertaken at the time of cross-examination of the plaintiff. The document produced is a photocopy of a stamped document of family arrangement and purported to have been signed in original by all the parties. The defendants believed that this was secondary evidence and sought for permission. The court rejected the same.

3. The primary evidence is defined under Section 62 of the Evidence Act where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. If a family arrangement is prepared and copies are made of the same, with all parties signing in the copies, each one must be taken as counterpart of the remaining. If all the parties have signed in each one of the counterparts, it will be taken as primary evidence against all the parties who have signed in each counterpart. By such a reckoning, it was not even a secondary evidence but it was a primary evidence of what it contained. The application was, therefore, unnecessary.

4. Even otherwise I have held that the issue of justification for production under Section 65 of the Evidence Act is a matter of evidence and if a party tendering secondary evidence sets out any of

the grounds mentioned in the said Section for production, the court shall receive the same and allow the affirmation of any of the grounds to be tested in the cross examination only. The court cannot prejudge whether the ground mentioned for production is correct or not even before the conclusion of trial. The document would require to be received on the same ground also.

5. The counsel for the respondents has an objection that this document was never confronted to any of the plaintiffs or their witnesses and the document is a fabrication. It is one thing to find the document to be fabricated but quite another to say that it is inadmissible. The admissibility of a document is always subject to proof by exhibiting the document. There is no presumption of genuineness. The plaintiffs are entitled to elicit in the cross examination any aspect which will militate against the genuineness of the document. The court was unjustified in declining the defendants the benefit of exhibiting a document which the defendants were claiming as having been executed by all parties and signed in the document produced.

6. The impugned order is set aside and the revision petitions are allowed.

(K.KANNAN)
JUDGE

22.03.2016
sanjeev