

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

**C.R. No.4330 of 2016
Date of Decision.13.07.2016**

Ashok Kumar

.....Petitioner

Vs.

Sh. Surinder Kumar and others

.....Respondents

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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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AMIT RAWAL J. (ORAL)

The petitioner-defendant No.3 is aggrieved of the impugned order whereby application at the instance of plaintiff seeking secondary evidence of proof of memorandum and settlement dated 13.03.2009 has been allowed.

Mr. Prateek Sodhi, learned counsel for the petitioner has raised following multi-fold arguments:-

- (i) That in examination-in-chief, the plaintiff had not tendered the original.
- (ii) That no objection was taken but in cross-examination it surfaced that the document was not original whereas it was a photocopy.
- (iii) That the document could not be permitted to be lead in evidence for want of registration.

In support of his contentions, he relies upon judgment rendered

by this Court in *Hari Singh Vs. Shish Ram 2002(4) RCR (Civil) 830*. He further contends that the application was moved after conclusion of the cross-examination and the Court granted the permission without taking into consideration the fact that the document was not registered and thus, urges this Court to set aside the impugned order.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that the factum of the family settlement has been specifically pleaded in paragraph 7 of the plaint. On going through the corresponding paragraph of the written statement, the aforementioned document has been admitted. In view of the admission of the document, the plea regarding admissibility and mode of proof, much less, registration of the document can be raised by the petitioner at the time of final arguments and not at this stage. The petitioner-defendant shall have right to rebut the aforementioned document in the cross-examination as well as at the time of arguments. Since the document has been admitted, the court below has not imposed the condition of existence and the ingredients of Section 65 of the Indian Evidence Act, therefore, need not be satisfied. It is yet to be ascertained whether the party has pre-existing right or not and as to whether the document requires registration or not.

For the aforementioned reasons, I do not find any reason to differ with the finding rendered by the trial Court and the order cannot be said to be without jurisdiction. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

July 13, 2016
Pankaj*