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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6686-2015

Date of decision : 23.05.2016

Paramjit Singh

... Petitioner

Versus

Gurdial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Garg, Advocate
for the petitioner.

Mr. Hitesh Kaplish, Advocate
for respondent No.1.

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-plaintiff is aggrieved of the impugned order, whereby the application moved at the instance of the respondent-defendant No.2 for proving the family settlement dated 17.07.1995 by way of secondary evidence has erroneously been allowed despite the fact that the condition precedent for allowing such application has not been adhered to i.e. existence and loss.

Mr. Sunil Garg, learned counsel appearing on behalf of the petitioner-plaintiff submits that the defendant(s) though, denied the existence of family settlement, even the amended written statement, in these circumstances, the secondary evidence ought not to have been allowed.

Mr. Hitesh Kaplish, learned counsel appearing on behalf of

respondent No.1 submits that the case of the petitioner-plaintiff is based upon the family settlement, aforementioned. Once, the plaintiff is admitting, no harm and prejudice would be caused in case, the secondary evidence is allowed in the manner and mode as has been noticed in the impugned order. The petitioner-plaintiff would have right to cross-examine the witnesses.

I have heard the learned counsel for the parties and appraised the paper book and of the view that filing of the application by the respondent-defendant No.2 for proving on record the aforementioned family settlement as secondary evidence *ex facie* is not maintainable, for, the pleaded case of the petitioner-plaintiff is based upon the family settlement. It was the plaintiff who was required to bring the agreement by moving such an application, in my view, the defendant(s) are trying to prove the case of the plaintiff which is against the settled cannons of law. Even otherwise, the impugned order does not reflect any direction to the defendant to prove the existence and loss. Be that as it may, once the defendant(s) had specifically denied the agreement to sell in the written statement, cannot be permitted to lead secondary evidence.

For the foregoing reasons, the impugned order is hereby set aside and the application seeking secondary evidence is dismissed.

Resultantly, the revision petition stands allowed.

23.05.2016
yogesh

(AMIT RAWAL)
JUDGE