

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

-.-

Civil Revision 7194 of 2016
Date of decision: 05.12.2016

Sohan Singh

..... Petitioner

Versus

Gurmeet Singh and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Jatinder Singla, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 20.09.2016 passed by the Civil Judge (Junior Division) Sangrur whereby application (Annexure P5) filed under Section 63 of Indian Evidence Act, 1872 for allowing secondary evidence to prove agreement of partition dated 12.11.1988 has been dismissed.

Counsel for the petitioner has submitted that the petitioner/plaintiff along with his brothers Mohan Singh and Darshan Singh has filed a suit for declaration that plaintiff Nos. 1 and 2 are owners to the extent of 1/3rd share each shown in 'red' and 'green' colour in the rough site plan and plaintiff No. 3 and defendant No. 1 are owner in equal share to the extent of 1/3rd share of house and commercial property shown in 'yellow' colour in rough site plan out of total land measuring 540 square yards on the basis of Will No. 46 dated 24.06.1997 executed by Hari Singh in favour of the plaintiffs and defendant No. 1 and registered Will No. 76 dated

06.07.2009 allegedly executed by Hari Singh in favour of defendants No. 2 and 3 and mutation on the basis of said Will is illegal, null and void and liable to be set aside. In the suit, the instant application was filed for permitting the plaintiffs to prove agreement of partition dated 12.11.1988 by way of secondary evidence but the same has been erroneously and illegally dismissed by the trial Court without appreciating the averments raised in the written statement filed by defendant No. 1, father of defendants No. 2 and 3, staying separately from his sons defendants No. 2 and 3. It is further submitted that reply to the application was not filed by defendant No. 1 which shows that defendant No. 1 had not contested prayer of the petitioner and other plaintiffs to prove agreement by way of secondary evidence.

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

The trial Court has dismissed the application primarily on two counts namely that the alleged agreement has not been pleaded by the petitioner/plaintiff in his plaint and in the statement of plaintiff Mohan Singh examined as a witness, there is no reference to the alleged compromise, therefore, the petitioner/plaintiff cannot be allowed to lead evidence beyond pleadings. Another ground taken up by the Court is that as the plaintiff has not pleaded agreement of partition and existence thereof has not been admitted by the contesting parties, the petitioner/plaintiff cannot be permitted to lead secondary evidence.

Counsel for the petitioner has fairly informed that there is no reference to agreement of partition dated 12.11.1988 in the pleadings nor the said agreement finds reference in the written statement filed by the

contesting parties. However, he has submitted that defendant No. 1 in para 3 of the written statement has stated that as per the adjustment of the family, he relinquished his right in the ancestral house at Village Rampura in favour of Darshan Singh, plaintiff No. 3 which shows that defendant No. 1 has impliedly admitted the factum of agreement in question. The plaintiffs can well take advantage of any such averment made by defendant No. 1 at an appropriate stage of the proceedings but the same is not sufficient to construe that defendant No. 1 has admitted the existence of any such agreement/compromise regarding partition amongst the family members.

Counsel for the petitioner has failed to point out any pleadings in regard whereof agreement can be produced as an evidence to prove a pleaded fact. The agreement in question being beyond pleadings may not be allowed to be proved even if the original is produced, therefore, disallowing such an evidence by way of secondary evidence cannot be faulted with. In this context, reference can be made to judgment of this Court '**Harjinder Singh v. Rajinder Kaur and others** (CR 4715 of 2014, decided on 10.11.2016).

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

05.12.2016
mohan bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No