

CR No.7843 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7843 of 2016 (O&M)

Date of decision:21.11.2016

Joginder Singh

... Petitioner

Vs.

Makhan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Bhatheja, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner/plaintiff No.2 is only aggrieved of the impugned order dated 28.09.2016, whereby, an application at the instance of the plaintiff under Sections 65 and 66 of Indian Evidence Act, has been dismissed and not against the order dated 28.09.2016, dismissing the application of defendant No.1.

Mr. Rajesh Bhatheja, learned counsel for the petitioner/plaintiff No.2 submits that suit of the petitioner/plaintiff is based upon the following relief:-

“It is, therefore, prayed that a decree of declaration to the effect that plaintiffs and performa def.no.4 are owners in possession of the land fully detailed and described in the head note of the plaint and defendant No.1 has no right, title or interest with the same, may kindly be passed in favour of the plaintiffs and performa def.no.4 against the defendant. It is further prayed that a decree of permanent injunction

restraining defendant no.1 from interfering into peaceful, lawful and continuous possession of the plaintiffs and perform def.no.4 over the land in question forcibly illegally, unjustly and without due course of law and also restraining the defendants from alienating any part of the property in question by sale, transfer, gift, mortgage etc till the decision of the suit may kindly be passed in favour of the plaintiffs and perform def.no.4 against the defendant. Or any other relief which this Hon'ble Court may deem fit and proper be granted, in the interest of justice.”

There was a categorical pleading in paragraph 2 of the plaint that original adoption deed is not in possession of the plaintiff but in possession of defendants No.2 and 3, who have allegedly taken the same, though it is in the possession of defendant No.1 also. Defendant No.1 had also moved similar application but the same has been dismissed by taking into consideration the reply of defendants No.2 and 3. He submits that since the suit is based upon the foundation of adoption deed, which is a photocopy, though at least, liberty should have been granted to prove its existence and loss, only then the Court should have considered for permitting the petitioner to lead evidence by way of secondary evidence or not.

I am in *prima facie* agreement with the submissions of Mr. Bhateja, for, once the petitioner has filed the suit on the basis of the photocopy of the adoption deed, he should have been given a chance to prove on record the existence or loss thereof. Though the application was

not only under Section 65 but also 66 of Indian Evidence Act, which itself is a notice to defendant No.3 to admit or deny the existence of the same. Having denied the same, onus shifts upon the plaintiff. In order to proceed further with regard to the relief as noticed above, the aforementioned exercise is required to be done.

In view of the aforementioned observations, the impugned order is hereby set aside and the matter is remitted back to the trial Court to decide the same afresh.

Revision petition stands allowed in the aforementioned terms.

(AMIT RAWAL)
JUDGE

November 21, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No