

CR No.8437 of 2016

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

CR No.8437 of 2016

Date of decision:15.12.2016

Vandana Garg and others

... Petitioners

Vs.

Sanittar Paul Dhir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.M.Munjal, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

Mr. C.M.Munjal, learned counsel for the petitioners contends that in pursuance to the application filed by the respondent-plaintiffs for production of original 07 sale deeds, the petitioner-defendant filed a reply that copies of the original sale deeds were not available but shall be produced same at relevant point of time as and when found. The trial Court, vide order dated 05.05.2016 disposed of the application by holding that adverse inference would be drawn against the defendants, also precluded the petitioner-defendants from producing the documents at the later stage.

He further submits that vide application dated 07.07.2016, (Annexure P-4), leave of the Court was sought that since the original sale deeds are found and permission may be granted to place on record but the same has erroneously been dismissed on the premise that application was not maintainable.

I have heard learned counsel for the petitioner-defendants and appraised the paper book and of the view that the Court had not followed

the principles in strict sense. In a suit for partition, all the parties being co-sharers, are plaintiffs or defendants, idea is whether the property at the hands of common ancestor or the parties to the lis being in joint ownership have sought the partition. The preliminary decree can be passed provided that suit is falling within the parameters of partition, in essence, the same is not hit by doctrine of partial partition or regarding non-impleadment of the co-sharers. The approach of the Court below, in my view, had been hyper-technical which should not have been in stringent as the petitioner-defendants in the reply to the application for producing the original sale deeds did not deny the production of the same but stated to produce as and when found, even though the Court below in the previous order sought to be recalled had curtailed the right and put fetter of not producing the same even at later stage. At the best, the observation qua adverse inference would have been sufficient/maintained.

In view of the aforementioned fact, the orders under challenge are set aside to the aforesaid extent. Accordingly, the revision petition stands allowed. The petitioners are permitted to submit the original sale deeds within a period of three weeks from the date of receipt of a certified copy of this order but it shall be subject to mode of proof at an appropriate stage, failing which, the impugned orders shall come into force.

December 15, 2016
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No