

CR-8576 of 2016 (O&M)

-1-

In the High Court of Punjab and Haryana at Chandigarh

CR-8576 of 2016 (O&M)

Date of Decision:22.12.2016

Amar Singh and others

---Petitioners

vs.

Darshan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arun Bansal, Advocate
for the petitioners

Rekha Mittal, J.

CM No. 26395-CII of 2016

Heard.

Allowed as prayed for.

Annexures A-1 and A-2 are taken on record subject to just

exceptions.

Main case

The present petition directs challenge against order dated 2.12.2016 (Annexure P-1) passed by the Civil Judge (Senior Division), Mansa whereby application filed by the respondents for adducing secondary evidence to prove the gift deed dated 4.6.1970 registered on 25.6.1970 has been allowed.

The sole submission made by counsel for the petitioners is that in the written statement dated 3.3.2015 (Ex. A-1) filed by the defendants, there is no reference that gift deed has been misplaced. One of the defendants Ajaib Singh tendered into evidence his affidavit dated 1.8.2016 by way of examination in chief but again in the said affidavit there is no reference that the original gift deed has been misplaced. It is argued with vehemence that the trial court without appreciating that there is no materials on record to substantiate plea of the defendants/respondents that the original gift deed has been misplaced has still allowed the application to prove the document by way of secondary evidence.

I have heard counsel for the petitioners, perused the paper book particularly the various annexures placed on record.

Indisputably, the petitioners/plaintiffs have filed a suit for declaration challenging gift deed No 993 dated 25.6.1970 purported to be executed by Mukhtiar Singh in favour of Darshan Singh, Naib Singh, Ajaib Singh and Amrik Singh sons of Baldev Singh residents of village Jawaharke Tehsil and District Mansa. As the petitioners have sought to assail the gift deed in question, there is no dispute between the parties with regard to existence of the document. The gift deed is a registered document and a witness from office of the Deputy Commissioner, Mansa was examined by the defendants and he brought duplicate copy of the said document stated to be kept in proper custody in the record room of DC's office. There is no such requirement in law that the defendants/respondents were required to plead the factum of loss of gift deed in the written statement nor failure of the respondents/defendants to plead such a fact in the written statement can debar the defendants/respondents to prove the document by way of secondary evidence by alleging that the original document could not be traced.

Taking into consideration the facts and circumstances discussed hereinbefore, I do not find any reason to interfere in the order impugned whereby the trial court has allowed secondary evidence to prove

the registered gift deed but subject to proof of loss and existence of the original document.

For the foregoing reasons, the petition stands disposed of. However, it would be open for the trial court to appreciate at an appropriate stage that the respondents/defendants adduce sufficient evidence to prove loss of original document more particularly in the circumstances that affidavit of Ajaib Singh dated 1.8.2016 filed by way of examination in chief does not make reference to loss of original document when as per plea of the application filed for adducing secondary evidence, the document is stated to be misplaced in the year 2013 when some loan was obtained from Punjab and Sind Bank.

(Rekha Mittal)
Judge

22.12.2016
paramjit

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