

C.R. No. 1204 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 1204 of 2017

DATE OF DECISION:17.02.2017

Mohinder Singh and another

.....Petitioners

Versus

Pala Singh and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.K. Arora, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 20.1.2017 passed by Additional Civil Judge (Senior Division), Faridkot, whereby, an application filed by the respondents-plaintiffs under Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Act') has been allowed.

Briefly, the facts of the case are that respondents-plaintiffs No.1 to 15 filed a suit for possession through redemption of land measuring 60 kanals 16 marlas situated in the revenue estate of village Qila Nau, Tehsil and District Faridkot on payment of mortgage amount of ₹4087/- to the petitioners-defendants and upon issuing of notice in the suit, the petitioners-defendants filed a detailed written statement. During pendency

of the suit, respondent No.1-plaintiff filed an application under Section 65 of the Act. Said application was contested by the petitioners-defendants by filing reply raising specific objection therein that such an application was not maintainable as there was no provision of law to allow secondary evidence of certified copy. Said application was allowed vide order dated 20.1.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that the application moved by the respondents-plaintiffs has been allowed without proper appreciation of Section 63 of the Act, whereas, requirement of said Section is that a document can be received as an evidence under the head of secondary evidence only when the copies made from or compared with the original are certified copies. The documents in question sought to be produced by way of secondary evidence are admittedly certified copies prepared from certified copies as originals are not available. Learned counsel further contends that there is no possibility of the documents being compared with the original. The trial Court while allowing the application has lost sight of requirement of Section 65 (a) of the Act as the secondary evidence can be admitted in case the conditions prescribed under Section 65 are satisfied.

Heard the arguments advanced by learned counsel for the petitioners and have also gone through the impugned order and other documents available on the file.

Facts regarding filing of suit, written statement and thereafter filing of application under Section 65 of the Act for permission to produce certified copy of the judgment and decree dated 12.4.1980 in civil suit No. 203 dated 1.6.1978 titled as **Balvir Singh and others Vs. Jarnail Singh**

and others passed by Sub Judge Ist Class, Faridkot are not disputed. The respondents-plaintiffs have moved the aforesaid application on the ground that the case file was burnt and the certified copy of judgment and decree dated 12.4.1980 is not available on record and the same can be brought on record by way of leading secondary evidence. In reply to the application, petitioners-defendants raised an objection that the application was not maintainable as there is no provision under law to bring certified copy of judgment and decree on record by way of leading secondary evidence. Moreover, it has also not been proved that the file was burnt. The application filed by respondents-plaintiffs was allowed by Additional Civil Judge (Senior Division), Faridkot on the ground that it is a settled proposition of law that certified copy of the judgment and decree is admissible in evidence as per provisions of Section 65 of the Act. As per section 63 (1) of the Act, secondary evidence includes certified copy given in other provisions of the Evidence Act. A certified copy of public document prepared under Section 76 of the Act is permissible under Section 77 and it can be allowed without being proved by calling witnesses. Section 65 of the Act deals with cases in which secondary evidence relating to documents may be given. Relevant portion of Section 65 is reproduced as under:-

“Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

- (a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the

Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) When the original has been destroyed or lost, or when the party offering evidence to its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) When the original is of such nature as not to be easily moveable;

(e) When the original is a public document within the meaning of Section 74;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in, to be given in evidence;

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Section 65 further provides that in cases (a), (c) and (d), any secondary evidence of the contents of document is admissible; in case (b) the written admission is admissible; in case (e) and (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

Section 67 relates to proof of signature/handwriting. It is extracted below:

“67: proof of signature and handwriting of persons alleged to

have signed or written document produced : If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.”

Sections 74 and 75 define public documents and private documents respectively. They are extracted below:

74. Public documents- The following documents are public documents:

- (1) documents forming the acts or records of the acts-
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive of any part of India or of the common wealth or of a foreign country.
- (2) public records kept in any State of private documents.

75. Private documents- All other documents are private.”

It was proved on the basis of statement of Neha, who was examined as PW-2 by the respondents-plaintiffs that the file was not traceable as the record room caught fire in the year 1984 and all the records lying in that were burnt. On perusal of said statement, it is also clear that as the original judgment and decree was not available, therefore, the same could not be produced before the Court. Moreover, it has also been held in the judgment of this Court rendered in **Mahant Bhram Dass @ Mahant Janki Dass Vs. Mahant Janki Dass** 1996 (1) RRR 481 that the certified

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copy of the certified copy is admissible in evidence. By considering the said provisions and ratio of aforesaid judgment, the application was allowed.

In view of the above, I do not feel appropriate to interfere with the impugned order and as such the revision petition being devoid of any merit is hereby dismissed.

February 17, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes