

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.2064 of 2017

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Date of decision:30.5.2018

Gurdial Kaur

.....Petitioner

v.

Sajjan Singh and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. K.S. Rekhi, Advocate for the petitioner.

Mr. A.D.S. Jattana, Advocate for respondents No.5 and 6.

None for respondents No.1 to 4.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 11.1.2017 (Annexure-P.3) passed by the learned Civil Judge (Junior Division), Ludhiana, whereby the application filed under Section 66 of Indian Evidence Act filed by the respondent was allowed.

Notice of motion was issued in this case.

Mr. A.D.S. Jattana, learned Advocate has put in appearance on behalf of respondents No.5 and 6 and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that the suit has been filed by Gurdial Kaur-plaintiff against Sajjan Singh and others-defendants for permanent injunction restraining the defendants from alienating by way of sale, mortgage etc., in any manner, any specific portion of the property measuring 2420 sq. yards plot No.273 fully described in the head note of the plaint and further restraining the defendants from dispossessing the plaintiff illegally and forcibly from any portion of the said property and for declaration that the impugned power of attorney dated 30.6.2010 already executed by defendant No.2 with regard to property measuring 401 sq. yards with specific boundaries etc. are illegal, null and void etc. During the pendency of the suit, an application was filed under Section 66 of the Indian Evidence Act by the defendant.

The learned Civil Judge (Junior Division), Ludhiana, vide impugned order dated 11.1.2017 allowed this application. Aggrieved from this order the present revision petition has been filed.

A perusal of the record shows that the plaintiff has alleged that there was no partition of the property, whereas the property had already been partitioned between the legal heirs of Bachan Singh. Each legal heir of Bachan Singh got 401 sq. yards. Balbir Singh, one of the sons of Bachan Singh already sold his share to Sohan Lal. The property was divided as per the site plan produced by the defendant. It is further averred that the partition agreement was executed on 22.9.1990 and the same was written by Deed Writer at the instance of Jagir Kaur and other parties on stamp paper. This agreement was acted upon and it was read over to all the legal heirs of Bachan Singh and they signed and thumb marked the same in presence of

witnesses Parkash Chand and Prem Singh, who also attested the same. It was scribed by Jagjit Rai, Deed Writer and duly entered in his register. The original agreement was handed over to Jagir Kaur and copies of the same were handed over to all the legal heirs of Bachan Singh. Kuldeep Singh also got the photocopy of the same. Gurdial Kaur after the death of Jagir Kaur took all the original documents in her possession as she used to reside with her. It has been further stated that this document was put to Gurdial Kaur and produced on the file as Mark-`A'. It has been further stated that Gurdial Kaur is also defendant in counter claim and if she fails to produce the original agreement, then permission be granted for leading secondary evidence to prove the said document.

In the reply, it has been stated that neither such agreement dated 22.9.1990 was executed nor is in possession of Gurdial Kaur. It has been further stated that alleged agreement claimed by defendant in the application has not been mentioned in the counter claim, written statement filed by the defendants and was never put to the witnesses at the time of cross-examination. It has also been stated that the application has been filed only to delay the proceedings of the case. \

A perusal of the record shows that as per the applicant-defendant, the original copy of the agreement was given to Jagir Kaur and as Jagir Kaur has already expired, Gurdial Kaur-plaintiff used to reside with Jagir Kaur and the original documents are in her possession, but Gurdial Kaur denied the documents as well as the fact that the agreement is in her possession. Therefore, the photocopy of the said agreement is available.

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As per the statement of defendant No.1, the agreement was on stamp paper and was scribed by regular Deed Writer in the presence of two witnesses and this agreement was entered into the register of deed writer.

Keeping in view the above facts as the original has not been produced by the plaintiff and is not available with the defendant-applicant and existence of same is there, therefore, the impugned order dated 11.1.2017 passed by the learned Civil Judge (Junior Division), Ludhiana, regarding accepting application for giving permission to lead secondary evidence is correct as per law and no illegality has been committed while passing the order and it does not require any interference from this Court and the same is upheld.

Finding no merit in this civil revision petition, the same is accordingly dismissed.

May 30, 2018.

(Inderjit Singh)
Judge

hsp

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