

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

**CR No.2324 of 2017(O&M)
Date of Decision: 07.12.2018**

Meenakshi Bhargava

.....Petitioner

Versus

Sudhir Kumar and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Ajay Jain, Advocate
for the petitioner.

Mr. N.D. Achint,Advocate
for respondents No.1 and 2.

Mr. Suresh Kumar Kaushik, Advocate
for respondents No.3 to 6.

RAJ MOHAN SINGH, J.(Oral)

[1]. This revision petition has been filed by the petitioner against the order dated 28.02.2017 passed by Civil Judge (Junior Division), Rewari, vide which prayer for framing of additional issue in terms of Order 14 Rule 5 CPC was declined.

[2]. Plaintiff/petitioner filed a suit for declaration, challenging the validity of general power of attorney, release deed, gift deed and sale deed on the ground of fraud and misrepresentation. Plaintiff and defendant No.1 are closely related. The execution

of aforesaid documents was claimed to be the result of good faith in terms of Section 111 of the Indian Evidence Act. Re-framing of issue No.1 was sought by the plaintiff in the following manner:-

“Whether the GPA No.10/4 dated 06.04.2000 and release deed vasika No.5333 dated 03.12.2009 are duly executed in accordance with law by the plaintiff and no fraud, misrepresentation, undue influence was exercised by the defendant No.1 upon the plaintiff?OPD (though wrongly shown as OPP in the application).”

[3]. Trial Court dismissed the application by referring to **Anil Rishi Vs. Gurbaksh Singh, 2006(3) RCR (Civil) 347.**

[4]. Learned counsel for the petitioner submitted that **Anil Rishi's case (supra)** was decided in the context where the fiduciary relationship was disputed in the said case and the Court held that the rigour of Section 111 of the Indian Evidence Act was not attracted. Otherwise in view of ratio laid down in **Pritam Singh Vs. Raj Kumar, 2013(4) RCR (Civil) 126,** **Subhash Chander and others Vs. M/s Active Promoters Pvt. Ltd.,2015(1) RCR (Civil) 62** and **Thiruvengada Pillai Vs. Navaneethammal and another, 2008(2) RCR (Civil) 262,** it has been opined that the person who claims some right on the basis of a document, is required to prove the execution of the

same. The ratio laid down in **Pritam Singh's case (supra)** in terms of para No.7 of the judgment can be appreciated in affirmation to the fact that burden to prove a document is always on the person who claims some right on the basis of said document and he is required to positively prove the same. In **Pritam Singh's case (supra)**, there was no dispute regarding valid service which was denied by the opposite party. If both the parties did not give any evidence, it would have only resulted in a finding that there was no service. Burden in that case must therefore be on the person, who affirmed that there was a valid service which was refused and it was held that defendant was not required to put the Bailiff in witness-box as his witness to deny that he did not serve the summons and that the defendant did not refuse to receive the same. In that eventuality, it will be inverting a legal logic to levels which the statute does not provide for. The Court in that proposition, rejected the arguments of valid service propounded by the plaintiff as against the defendant who had denied the same.

[5]. In view of aforesaid legal position, there cannot be any denial to the fact that the person who claims some right on the basis of a document must prove the same. Since the defendants are relying upon admissibility of documents under challenge, therefore, onus has to be upon the plaintiff to prove

the same positively. The ratio laid down in **Subhash Chander and others case (supra)** and **Thiruvengada Pillai's case (supra)** would be attracted.

[6]. At this stage, learned counsel for the parties are *ad idem* that both the parties have led their evidence and the case is fixed for rebuttal and arguments. In case, defendants wish to lead evidence after re-casting of the issue, the plaintiff would be well within his right to rebut the same in accordance with law.

[7]. In view of observations made hereinabove, this revision petition is disposed of. Normal consequences to follow.

07.12.2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No