

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

**CR No.8475 of 2014 (O&M)
Date of Decision:16.02.2018**

Manjula Petitioner

Vs.

Shardha and another Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Mandeep S. Sachdev, Advocate
 for the petitioner.

 Mr. Vikram Singh, Advocate for
 respondent No.1.

RAMENDRA JAIN, J. (Oral)

Through this revision petition, challenge has been made to the order dated 01.12.2014 (Annexure P.1) of the trial Court dismissing the application of the petitioner- defendant under Section 65 of the Indian Evidence Act (for short, 'the Act') seeking permission to prove exchange deed dated 30.09.1998 by way of secondary evidence.

In nutshell, respondent No.1 filed a suit against the appellant and her real sister to declare exchange deed dated 30.09.1998 and mutation thereof bearing No.20856 as illegal, null and void, inoperative, ineffective and had no binding effect upon her rights. When the turn of the appellant came for adducing her evidence in affirmative, the appellant moved an application (Annexure P.4) under Section 65 of the Act for grant her permission to prove the aforesaid exchange deed by way of secondary

evidence.

On contest, the said application was dismissed by the trial Court vide impugned order Annexure P.1.

Learned counsel for the petitioner contends that the existence of the original exchange deed was well proved on the record as the same was put to PW2 Darshan Singh, Sadar Kanungo of the Office of DC, Muktsar and PW5 Mohan Lal, witnesses of respondent No.1- plaintiff and they both have admitted in their cross-examination about the genuineness of the said document and sanctioning of mutation on the basis of the said exchange deed. This original exchange deed after completion of cross-examination of above witnesses was ordered to be returned to the appellant. However, the same had lost, while the petitioner was travelling from Delhi to Chandigarh for which he got registered FIR Annexure P.8. The proving of the said exchange deed is very much necessary for effective adjudication of the case.

On the other hand, learned counsel for respondent No.1- plaintiff vehemently opposed the above submissions of learned counsel for the petitioner, submitting that the exchange deed which has already been exhibited with objection during trial can be considered by trial Court at the time of final adjudication of the suit. At this stage, there is no necessity to prove the exchange deed in question which has already been exhibited by leading secondary evidence.

Having given considerable thoughts to the submissions made by both the sides, this Court finds merit in the instant revision petition for the reasons to follow:-

(1) the entire controversy in between the parties revolves around the exchange deed in question. Respondent No.1- plaintiff though has admitted the existence of the same, but has pleaded it to be a forged document. Contrary to it, according to the petitioner, it is a genuine document duly executed by father of the respondent No.1- plaintiff as her general attorney. The exchange deed in question has already been exhibited after putting the same to own witnesses of respondent No.1- plaintiff, namely, PW2 Darshan Singh and PW5 Mohan Lal, who after seeing the original exchange deed which was returned on conclusion of their cross-examination to the petitioner have categorically admitted that the impugned exchange deed in question was sanctioned on the basis of the same; (3) The existence of the original exchange deed is then proved on the record as discussed above. It was put to PW2 and PW5 own witnesses of respondent No.1- plaintiff and it lost thereafter during travelling by the petitioner from Delhi to Chandigarh is also proved from FIR (Annexure P.8), therefore, this Court find no reason to deny the petitioner to prove the contents of the exchange deed in question by leading secondary evidence. The trial Court has unnecessarily touched the issue as to whether the exchange deed in question was required for registration or not inasmuch as the same was not relevant at the time of hearing upon the application of the petitioner under Section 65 of the Act. The impugned order passed by the trial Court is patently illegal and thus is liable to be set aside.

In view of the discussion above, this revision petition is accepted. Resultantly, the impugned order Annexure P.1 dated 01.12.2014 is set aside. The petitioner is permitted to prove the contents of the

exchange deed in question by leading secondary evidence.

Disposed of.

February 16, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No