

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1931-2015 (O&M)
Date of decision:2.5.2019

Bharat Pal Singh (since deceased) through LRsPetitioners
Manavjit Kaur and others

Versus

Rajesh Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Gill, Advocate for the petitioners.

Mr. Vikas Bahl, Sr. Advocate with
Ms. Vedika Gandhi, Advocate for respondents.

KULDIP SINGH, J.

Present is the revision petition against the impugned order dated 20.2.2015 passed by learned Civil Judge (Junior Division), Chandigarh vide which application filed by plaintiff-petitioner under Section 65 of the Evidence Act, 1872 (for short 'the Act') for permission to lead secondary evidence to prove the memorandum of understanding (MoU) dated 24.7.2003 among all three joint owners of Kothi No. 506, Sector 8-B, Chandigarh was dismissed.

Heard, learned counsel for the parties and have carefully perused the case file.

It comes out that the plaintiff-petitioner, now succeeded by his LRs, has filed a suit for declaration challenging the sale deed dated 21.4.2011. It is claimed that there was a MoU between three co-owners giving the preferential rights, to purchase the alleged kothi in case the same

is to be sold. It is further alleged that in the said MoU there was *clause 7-B* in this regard. In the suit, plaintiff issued a notice to the defendants to produce the MoU. Defendants denied the possession of the MoU and accordingly, the plaintiff moved the application under Section 65 of the Act.

Learned Civil Judge (Junior Division), Chandigarh observed that the parties have to prove the existence and loss of the original or that it is in the possession of the opposite party but it has failed to do so. Further, the learned Civil Judge (Junior Division), Chandigarh has also taken a note of the objections raised by the defendants regarding the admissibility of the document on the ground that it is unstamped and unregistered. Therefore, learned Civil Judge (Junior Division), Chandigarh declined the said application.

I am of view that the existence and loss can be proved only the parties are allowed to lead the evidence in this regard. The objection of the document being unregistered and unstamped is to be taken before the lower Court and it is for the lower Court to decide as to whether the objections are to be upheld or rejected. This is to be done during the process when the document is sought to be exhibited. This revision is pending before this Court for the last more than 4 years which has resulted in the delay of the disposal of the suit.

In the circumstances, revision petition is allowed and the petitioner is allowed to lead secondary evidence regarding MoU dated 24.7.2003, subject to the condition that he will have to prove the existence and loss of the original, the evidence regarding which shall be led along with

the main evidence. If the trial Court after recording the evidence, finds at the time of final disposal of suit that plaintiff has proved all the necessary ingredients under Section 65 of the Act, the document will be admitted in the evidence otherwise it will be discarded. However, it shall always be open up for the defendants to raise all the available pleas regarding the document being unregistered and unstamped and press that it should not be exhibited. It is also left to the trial Court to decide the same at the time of final disposal of the suit.

Present revision petition is allowed accordingly.

(KULDIP SINGH)
JUDGE

2.5.2019
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Whethers peaking/reasoned	Yes
Whether Reportable:	No