

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CR-1358-2018

Date of Decision:05.03.2019

Kewal Krishan

....Petitioner

Versus

Bhagwant Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rahul Sharma, Advocate for the petitioner.

Mr. D.S. Gurna, Advocate for the respondents.

AMIT RAWAL, J. (Oral):-

The present petition is directed against the impugned order dated 03.01.2018 (Annexure P-3), passed by the learned Civil Judge (Junior Division), Payal, whereby the application under Section 65 of the Indian Evidence Act, filed by the petitioner-plaintiff seeking permission of the trial Court to prove the oral family settlement reduced into writing by way of secondary evidence, has been declined.

Learned counsel appearing on behalf of the petitioner submitted that petitioner-plaintiff filed a suit for declaration and permanent injunction by challenging the sale dated 22.06.2012 and 06.09.2012, executed by defendant No.4 in favour of defendant No.2. Kewal Krishan-plaintiff is son of Jangir Chand whereas respondent No.4-Meenakshi is niece. Defendant No.4- Meenakshi had executed the aforementioned sale deed without any

right title as it was coparcenery property in the name of Jangir Chand and had put the vendee/transferee in specific possession. In fact, by way of family settlement in the month of June 1995, parties had already partitioned the land in four equal shares between the family members namely Kewal Krishan plaintiff, Devinder Kumar defendant and Tarsem Lal and Shri Jangir Chand. The land adjoining to the property owned by Shri Om Parkash real brother of Jangir Chand, comprised of Khasra No.1240/1, 1237/1 was given to Tarsem Lal while the land comprised out of Khasra No.1242, 1239, 1238 adjoining to the Canal was given to the plaintiff. The original family settlement was lost and in this regard, DDR was lodged. The Court below abdicated in not allowing the application.

Learned counsel appearing on behalf of the respondent-defendant submitted that sale deed is only a proof of share of the defendant and no such partition had taken place. The family settlement was denied in the written statement. In the absence of existence, the application for secondary evidence subject to existence of loss cannot be allowed, so, rightly trial Court declined the same.

I have heard learned counsel for the parties and carefully gone through the paper book and of the view that, there is no force and merit. The aforementioned suit was filed in the year 2017 whereas family settlement took place in the year 1995. If at all, there was some active participation of the coparceners who had arrived at a settlement in the year 1995 that would have reflected in the way. The suit for declaration in the absence of joint possession, prima facie may have same impact on

adjudication for the revenue record which reflects the joint possession.

Be that as it may, story coined in the application was that on 12.09.2017, while going on scooter, the petitioner lost original family settlement and in this regard, lodged an FIR on the same very date. It is a very common practice amongst the litigants to create the story of alleged loss. In view of the fact of the matter, had the plaintiff followed provisions of Order 13 Rule 1 CPC by annexing original family settlement, this situation would not arise. The presumption of suspicion regarding forgery and fabrication cannot be ruled out.

In view of the observations made herein-above, I am of the view that order challenged by the petitioner-plaintiff cannot be said to be suffering from illegality and infirmity. Accordingly, the present Revision Petition is dismissed.

05.03.2019
anju rani

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No