

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

**Civil Revision No.728 of 2020
Date of Decision:4.2.2020**

Mohinder Rani Lamba (since deceased) th.LRs. ...Petitioner

Versus

Yashvir Saini and others ...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Deepak Thapar, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for setting aside the impugned order dated 20.7.2019 passed by the learned Civil Judge (Jr.Divn.), Rohtak, ordering exhibiting a copy of the registered lease deed dated 5.4.1977 marked as document "A" produced by the plaintiffs and taking it on the record as "Ex.PX."
2. Heard Mr. Thapar for the defendants who are the petitioners through her legal representatives in a property dispute.
3. The order dated 20.7.2019 passed by the Civil Judge (Jr.Divn.), Rohtak, impugned by the petitioners is a short order and is reproduced below:

"During the course of arguments, it was pointed out that the certified copy of the registered lease deed dated 5.4.1977, on the basis of which plaintiffs have filed the suit is not available on record but copy of the same is available as Mark-A. Noteworthy, the document is not disputed by the defendants in the written statement.

Therefore, taking aid of Section 165 of Indian

Evidence Act and 151 CPC, certified copy (containing 7 out of 8 pages) of the registered lease deed is taken from the plaintiff and the same is kept on record as Ex.PX. However, page No.4 is missing from the certified copy and the same shall be placed on record on 24.7.2019.”

4. It is argued that the registered lease deed dated 5.4.1977, could not have been exhibited as a document without adopting the proper mode of proof of documents and if it is allowed to be exhibited it will amount to plaintiffs filling up a lacuna in their case. Photocopy of the certified copy of the lease deed dated 5.4.1997, was available on record as Mark 'A' and the learned trial judge has converted it into Ex.PX by taking the aid of Section 165 of Indian Evidence Act, read with Section 151 of the CPC.

5. Asking for the pleadings for perusal, Mr.Thapar has shown the plaint and the written statement copies which are not on file but he has produced them from his papers. In paragraph 2 of the plaint, the original plaintiffs aver that Smt. Jai Jai Wanti widow of Sh.Sohan Lal (Kaisath) Bhatnagar, resident of Rohtak was owner of the disputed plot measuring 848 square yards. She gave on lease this plot to the defendants for a period of 39 years from 1.3.1977 to 29.2.2016, vide lease deed bearing No.63/1 dated 5.4.1997, on the terms and conditions contained in the lease deed.

6. The defendants in their written statement did not acknowledge the document i.e. the lease deed dated 5.4.1977 but explained that the subsequent owner had entered into an agreement on 9.5.2005 whereby the terms of the lease deed were changed. They have not denied the existence of the document and, therefore, formal mode of proof was not required. A fact not denied specifically is deemed to be accepted. In any case, the lease deed dated 5.4.1977 is a private document in a public office. Therefore, the Court

can always take a judicial notice of the documents, but with caution. The recitals in the lease deed and the agreement will be considered by the trial court as well as the legal effect of the change they have brought about on the rights of the parties. In this view of the matter, I do not find any patent error committed by the learned trial judge in the order reproduced above.

7. As far as the copy of the lease deed is concerned, which contains one page less from the docket and is not the entire document, Mr.Thapar submits was not a proper thing to do in exhibiting it without first directing production of the missing page before acceptance of the request, I would only say that the trial Court is conscious of this fact, observing in the order that page 4 is missing from the photocopy of the certified copy and the same shall be placed on record on 24.7.2019 by the plaintiffs. In case the needful has been done, then the order stands satisfied with the complete document on record. In case, it is not so, the parties can take the matter further, as advised.

8. The other contention that the copy of the lease deed should not be read in evidence or how it should be read and its effect on the rights of the parties is open to debate in the trial court. The settled law is that mere exhibition of document in evidence does not amount to proof of the same. It must be remembered that the receipt of secondary evidence does not dispense with requirement of proof in the manner required by law.

9. The evidential worth and relevance to be attached to a document or its probative value is to judge the evidence's usefulness in proving, or disproving, a particular fact in the case and in issue, with the court determining the actual value of such evidence according to its relevance to the case at hand. It is too early to say anything on the ultimate

result of the exhibition of document “Ex.PX.” till the trial court applies its mind at the time of passing judgment. No prejudice has been caused to the petitioner by admitting “Ex.PX.” to the file since the petitioners were aware of it in the written statement of the opposite party, who are the respondents herein.

10. With these observations, the petition is dismissed.

February 4, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No