

Sr. No. 110

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

CR-3083-2021

Date of decision: 02.12.2021

Sheela Devi

...Petitioner

Vs.

Shambhu Dayal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

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

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for setting aside the impugned order dated 28.09.2021 (Annexure P1) passed by learned Civil Judge (Jr. Division), Jalandhar whereby second application under Section 65 of the Indian Evidence Act for proving the family compromise dated 24.08.2009 by way of secondary evidence moved by defendant/respondent No.1, has been allowed.

2. I have heard learned counsel for the petitioner and gone through the case file.

3. No interference is called for in the order assailed herein, which is premised, *inter alia*, on the following reasoning:

“By way of present application, the applicant/defendant wants to lead secondary evidence for proving the family compromise dated 24.08.2009. It is the case of the applicant that the original of the same was kept by Dev Karan Dass and the same has not been produced by the plaintiffs. In this regard, perusal of the record would itself speak that plaintiff no.1 Dev Karan Dass had moved an application for withdrawal of the suit. In the said application, he had specifically pleaded that properties as mentioned in the head note of the plaint were already been settled by family compromise dated 24.08.2009. Though, the statement of plaintiff no.1 (since deceased) could not be recorded in the Court due to his non-appearance on

23.11.2003. As per record, the said plaintiff has expired during the pendency of the present case. Even perusal of the record would reveal that in the written statement so filed by defendant No.1 &2, they have specifically relied upon the said family settlement. Even when an application for production of documents was moved by the plaintiffs and applicant/defendant had taken specific plea of original of the same being in custody of plaintiff Dev Karan Dass. As such, the existence of said document, prima facie, stands proved on record. Further, it is to be kept in mind that the Hon'ble Punjab and Haryana High Court in the case titled as 'Mohinder Singh Vs. Kuljeet Singh 2016 (4) PLR 483 has held that secondary evidence is matter of consideration U/s 65 of Indian Evidence Act. The Hon'ble Court further observed that if any of the ground mentioned U/s 65 is spoken to by the party who is seeking for reception of secondary evidence, the Court is bound to accept it and leave it to the opposite party to elicit in the cross-examination that grounds made are not proved and the documents produced as secondary evidence ought not be received. Thus, the objections raised by learned counsel for plaintiffs, at this stage, is not maintainable. Accordingly, the application in hand is allowed and applicant/defendant is allowed to prove the copy of family compromise dated 24.08.2009 by way of secondary evidence. However, it is made clear that the present order would be subject to all just exception. The application stands disposed off in above terms."

4. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this court.
5. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement.
6. Dismissed.

02.12.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No