

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

**CR No.2036 of 2019 (O&M)
Date of decision: 22.07.2022**

Kartar Kaur

....Petitioner

Versus

Avtar Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Narinder S. Lucky, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

This petition is pending since 2019 and as per the office report, the contesting respondents are duly served, however, no one is putting in appearance.

Prayer in this petition is for setting-aside the order dated 20.12.2018 passed by the Additional Civil Judge (Sr. Division) Tarn Taran, vide which an application filed by the petitioner/plaintiff to lead secondary evidence with regard to a sale deed dated 11.04.1966 was dismissed.

Brief facts of the case are that the plaintiff has filed a suit for declaration to the effect that she is a co-sharer in possession of the land in dispute and in the alternative, a prayer was made for recovery of possession in respect of the land measuring 16 Kanal in Khasra Nos.30//20(8-0) and 29//16(8-0) situated in the revenue estate of Pandori Gola, Tehsil and District Tarn Taran.

Counsel for the appellant has argued that the case of the

petitioner/plaintiff is that vide sale deed dated 11.04.1966, executed by one Swaran Kaur @ Swarani in respect of the aforesaid land, in favour of the petitioner/plaintiff, the same was later on, exchanged with one Janmeja Singh vide exchange deed dated 30.07.1969. During the time of exchange, the plaintiff/petitioner has handed over the original sale deed dated 11.04.1966 to Janmeja Singh as he became owner of the said land which was purchased in terms of the said sale deed from Swaran Kaur @ Swarani as the same was exchanged vide exchange deed dated 30.07.1969, with the plaintiff/petitioner.

Counsel for the appellant has further submitted that since the said sale deed was not in possession of the appellant, the appellant has served a notice to counsel for the respondent under Order 12 Rule 8 CPC, directing the defendants to produce the said sale deed dated 11.04.1966.

No reply was filed to the said notice.

Thereafter, the petitioner filed an application before the trial Court seeking permission to prove the sale deed dated 11.04.1966, by way of leading secondary evidence. In the application, the petitioner has set up a case that notice under Order 12 Rule 8 CPC has already been served upon the contesting respondents but neither the reply has been filed nor the original sale deed was produced and therefore, the certified copy of the sale deed, which is a public document, be permitted to be produced on record by way of allowing the application for leading secondary evidence.

Counsel for the appellant has also argued that vide

impugned order dated 20.12.2018, the trial Court dismissed the said application only on the ground that Janmeja Singh is not a party to the suit.

Counsel for the appellant has further submitted that, in fact, the trial Court has failed to appreciate the fact that Janmeja Singh had died and his LRs are already brought on record as defendants, who are deemed to be in possession of the sale deed dated 11.04.1966. It is also argued that the trial Court has also not appreciated the provisions of Section 63 read with Section 65 of the Indian Evidence Act. Lastly, it is submitted that the petitioner/plaintiff has duly proved that the document/sale deed dated 11.04.1966, was in possession of the predecessor-in-interest of the defendant and deemed to be in possession of the defendants and therefore, the application should have been allowed.

Since there is no representation on behalf of the respondent and all the facts as pleaded by the plaintiff/petitioner goes un-rebutted, the present petition is allowed and the impugned order dated 20.12.2018, is set-aside and the petitioner/plaintiff is permitted to lead secondary evidence to prove the certified copy of the sale deed dated 11.04.1966, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

22.07.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No