

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3801 of 2019

Date of Decision: November 17, 2022

Anil & another

...Petitioners

Versus

Pardeep & others

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr.Ashish Gupta, Advocate,
for the petitioners.

Mr.Mukesh Rao, Advocate,
for respondent No.1.

Mr.Vikram Singh, Advocate,
for respondent No.2 (b).

MANOJ BAJAJ, J.

Petitioners (defendants) have filed this revision petition to challenge the order dated 03.05.2019 (Annexure P-6) passed by the Civil Judge (Junior Division), Rewari, whereby their application seeking permission to adduce photocopy of family settlement dated 14.09.1988 by way of secondary evidence has been dismissed.

Learned counsel for the petitioners has argued that the plaintiffs have filed a suit for separate possession by way of partition which is being contested by the defendants and they have already set up a ground that the parties being co-sharers have already determined their respective shares, therefore, the suit is not maintainable and in order to prove their case,

defendants want to adduce in evidence photocopy of the family settlement dated 14.09.1988. He submits that the original of this family settlement is in possession of the plaintiffs, therefore, the said document is unattainable, thus, the defendants be permitted to lead secondary evidence in respect of this essential piece of evidence which goes to the root of the controversy between the parties. He submits that now the plaintiffs have denied the execution of the written family settlement arrived at amongst the co-sharers, who are closely related, but the trial court has failed to appreciate the pleadings of the parties carefully while dismissing the application. In support of his argument, he has relied upon the decision dated 15.11.2017 passed in Civil Revision No.5810 of 2015 titled as “Anil Kumar Deswal Versus Rishi Verma & another”.

The prayer is opposed by the learned counsel for the respondents and according to them, the petitioners have introduced this document only during trial as in their written statement, it is nowhere pleaded by them that any family settlement was reduced in writing amongst the co-sharers. In this regard, learned counsel have drawn the attention of the court to the averment contained in para 2 of the preliminary objections of their written statement (Annexure P-2). They submit that the trial court has examined the facts and circumstances of this case properly while dismissing the application of the defendants. In support of their argument, they have relied upon the decision rendered in **Ram Karan Khichar Versus Mangal Deep Cooperative House Building Society Ltd., Hisar & others, 2015(48) R.C.R. (Civil) 924.**

After hearing the learned counsel for the parties and considering the above background, this court finds that the petitioners

(defendants) in their written statement have set up a candid defence that the co-sharers had entered into an oral family settlement and there is no reference in the entire written statement in respect of any written compromise/family settlement, as pleaded in the application dated 01.04.2019.

During the course of hearing, it is not disputed by the learned counsel that the averment in the application that the original of the written family settlement is with the plaintiffs and is unattainable, is not pleaded in the written statement. By now, it is settled law that a party can be allowed to adduce secondary evidence, if, it satisfies the conditions contained in Section 65 Indian Evidence Act, particularly with regard to the existence of the document and its unavailability. The averments contained in the application are in stark contradiction to the pleas raised in the written statement, therefore, the grounds raised by the defendants to lead secondary evidence do not meet with the requirement of the statutory condition contemplated under Section 65 Indian Evidence Act, thus, the decision in **Anil Kumar Deswal's case (supra)** relied upon by the learned counsel for the petitioners is not helpful to the case of the petitioners as in the said case, register maintained by the Notary Public was taken in possession by the police in relation to investigation in a crime and the petitioners before this court had relied upon the material regarding existence of this register. In the decision in **Ram Karan Khichar's case (supra)**, this court observed that the agreement sought to be adduced by way of secondary evidence is not pleaded in the written statement and being beyond pleadings cannot be taken into consideration. Further, a perusal of the impugned order reveals that the court had carefully examined the facts and circumstances of the case

while dismissing the application of the petitioners and the impugned order does not suffer from any illegality or impropriety.

During the course of hearing, learned counsel for the petitioners has also produced the order dated 08.09.2016, whereby the Civil Judge (Junior Division), Rewari framed the issues and perusal of the same would show that the petitioner-defendants did not press any issue relating to the alleged written family settlement dated 14.09.1988.

Resultantly, no ground is made out for exercising revisional jurisdiction.

Dismissed.

November 17, 2022
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No