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

**CR-3098-2022 (O&M)
Date of decision: 04.08.2022**

Rajesh Kumar

... Petitioner

Vs.

Bharat Pal Singh (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. M.L. Saggar, Sr. Advocate with
Ms. Armaan, Saggar, Advocate,
Mr. T.S. Sullar, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 19.07.2022 passed by the Civil Judge (Jr. Divn.), Chandigarh, vide which application filed by the petitioner-defendant for de-exhibition of Ex.P8 has been dismissed.

Learned senior counsel for the petitioner has referred to the order dated 02.05.2019 passed in CR-1931-2015, filed by respondent Bharat Pal Singh through his LR's, challenging the earlier order dated 20.02.2015, vide which an application filed by the respondent-plaintiff under Section 65 of the Indian Evidence Act, 1872 to lead secondary evidence was declined. The operative part of the order dated 02.05.2019, allowing the revision petition i.e.

CR-1931-2015, reads as under: -

“In the circumstances, revision petition is allowed and the petitioner is allowed to lead secondary evidence regarding MoU dated 24.7.2003, subject to the condition that he will have to prove the existence and loss of the original, the evidence regarding which shall be led along with the main evidence. If the trial Court after recording the evidence, finds at the time of final disposal of suit that plaintiff has proved all the necessary ingredients under Section 65 of the Act, the document will be admitted in the evidence otherwise it will be discarded. However, it shall always be open up for the defendants to raise all the available pleas regarding the document being unregistered and unstamped and press that it should not be exhibited. It is also left to the trial Court to decide the same at the time of final disposal of the suit.

Present revision petition is allowed accordingly.”

Learned senior counsel has submitted that permission to lead secondary evidence was granted with a condition that if the ingredients of Section 65 of the Indian Evidence Act are proved, only then the document will be admitted in evidence, otherwise it will be discarded. Learned senior counsel has referred to statement of PW10 Manavjit Kaur, who, in examination-in-chief, has simply tendered her affidavit as Ex.PW10A and exhibited the said document as Ex.P8, though an objection was raised by the petitioner-defendant side, as noticed in the order dated 10.09.2019, wherein the said document was exhibited as Ex.P8. It is argued that since this document was wrongly exhibited as Ex.P8 in the statement of PW10, an application was moved by the

petitioner-defendant for de-exhibition of the same, which was declined by the trial Court, merely on the ground that once a document is exhibited, it could not be de-exhibited. It is further argued that at the most, this document could be marked, as admissibility of the same, in terms of the order dated 02.05.2019 passed by this Court, is to be seen at the time of final disposal of the case, subject to the condition that ingredients of Section 65 of the Indian Evidence Act are made out or not.

After hearing learned senior counsel for the petitioner, issuance of notice of motion is dispensed with at this stage, as it will cause further delay in disposal of the case.

Accordingly, this petition is allowed and the impugned order dated 19.07.2022 is clarified to the extent that mere exhibition of Ex.P8 with the aforesaid document would not mean its admissibility in the evidence, as it will be seen by the trial Court at the time of final disposal of the case in terms of the order dated 02.05.2019.

With the aforesaid clarification, present provision petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

04.08.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No