

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6778 of 2019

Date of Decision: 07.09.2022

Parupkar Kaur alias Pukaar

... Petitioner(s)

Versus

Sarabjit Sagar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Chetan Bansal, Advocate
for the petitioner(s).

Mr. H.S.Dhindsa, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The petitioner herein is defendant No.3 in a suit for grant of decree of declaration to the effect that the plaintiff does not have any relation with defendant No.3. In other words, the plaintiff claims decree of declaration that the defendant No.3 is not his wife.
2. During the pendency of the suit, an application filed by the plaintiff for permission to lead secondary evidence in order to prove a deed of settlement dated 06.05.2003 has been allowed by the Court. The plaintiff alleges that the original deed of writing signed by the parties is in possession of defendant No.3. The Court has permitted the plaintiff to lead secondary evidence.
3. Heard the learned counsel representing the parties, at some length and with their able assistance, perused the paper-book
4. The learned counsel representing the petitioner contends that the application under Section 63 read with Section 64 and 65 of the Indian Evidence Act, 1872 (hereinafter referred to as "the 1872 Act") should not be allowed by the trial Court unless the plaintiff proves the existence of the original itself. It would be noted here that there is no provision either in the

and Orders for seeking prior permission of the Court to lead secondary evidence. The evidence can be primary or secondary. The practice to file an application for seeking prior permission to lead secondary evidence is not supported by any statutory provision. In *Madan vs. Shankar and Others (Regular Second Appeal No. 327 of 1989, decided on 01.11.2018)*, *Dhanpat vs. Sheo Ram 2020 SCOnline SC 606* and in *Civil Revision Application No.82 of 2016 decided on 10.11.2017 by the Bombay High Court*, this aspect has been dealt with, in detail.

5. Keeping in view the aforesaid facts, the revision petition is disposed of. The trial Court shall, at appropriate stage, examine as to “whether the party leading secondary evidence is entitled to do so under the provisions of Section 65 of the 1872 Act?”

6. At this stage, the learned counsel representing the petitioner submits that the alleged writing is not a part of the pleadings in the plaint. The learned counsel representing the respondent has submitted that in replication, the aforesaid writing has been pleaded. In any case, as per Order VI Rule 2 CPC, the evidence is not required to be made a part of the pleadings.

7. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

September 07, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No