

2023:PHHC:131298
**113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-706-2019 (O&M)
Date of decision: 07.10.2023

Vinod Kumar

...Petitioner

Versus

Vijay Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Hardik Ahluwalia, Advocate for
Mr. Amandeep Singh Manise, Advocate for the
petitioner

Mr.Harminder Singh, Advocate for respondent no.1 & 2

ANIL KSHETARPAL, J (Oral)

1. The correctness of the order passed by the trial court on 27.09.2018 has been challenged in this revision petition. A suit filed by the plaintiff (petitioner herein) for grant of decree of declaration to the effect that he is a co-sharer/co-owner to the extent of 6 ½ marlas plot, out of the total land measuring 1 kanal 7 marlas comprised in khasra no.30R/10/4, located in Village Ghuman is pending before the trial court. During the pendency of the suit, the plaintiff filed an application under Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as '1872 Act') for permission to lead secondary evidence in order to produce and prove the registered sale deeds dated 08.10.1993 and 19.12.1995. The trial court allowed the application with respect to the sale deed

dated 19.12.1995 whereas dismissed the application with respect to the sale deed dated 08.10.1993 on the ground that the same is beyond pleadings.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the petitioner contends that in fact there are two sale deeds with respect to the suit land comprised in khasra no. 30R/10/4 and the pieces of evidence are not required to be made part of the pleadings. He further relies upon the judgment passed in **Madan Lal vs. Shankar and others (RSA-327-1989 decided on 01.11.2018)** to contend that in fact no application under Section 65 of the 1872 Act is required to be filed.

4. On the other hand, the learned counsel representing the respondent does not dispute that the Bombay High Court as well as this Court in various judgments have held that the practice of filing application for permission to lead secondary evidence is not supported by any statute/rules/regulations.

5. In fact, a significantly large number of cases of similar nature have been disposed of those including CR-8166-2018 (**Ashok Kumar vs. vs. Sudesh Rani and others**) decided on 21.07.2023 in the following manner:-

“4. In fact, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders,

*this Court in **RSA-327-1989, titled as “Madan Lal Vs. Shankar and others”**, decided on 01.11.2018, came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence.*

*5. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being filed under misconception, which has now attained proportions of an epidemic. Even the Supreme Court in **Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606** made observations in this regard.*

*6. In Civil Revision No.2575 of 2020, titled as “**Vinod Kumar Vs. Satbir Singh**”, decided on 03.03.2021, this Court has held as under:-*

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

6. Keeping in view the aforesaid facts and discussion, the revision petition is disposed of in terms of the observations, which

have already been made. The trial court would permit the petitioner to lead evidence. The court will thereafter examine the aspect of the admissibility of the evidence so led in accordance with Section 65 of the 1872 Act. It shall be open to the respondent to take all objections.

All the pending miscellaneous applications, if any, are also disposed of.

07.10.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE