

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.204

Case No. : C.R. No. 7497 of 2019

Date of Decision : August 01, 2023

Kuldip Singh

.... Petitioner

vs.

Harbhajan Singh (since deceased)
through his LRs and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Ms. Aashna Gill, Advocate
for the petitioner.

Ms. Bhavna Kapur, Advocate
with Mr. Amulay Kalia, Advocate
for respondent no.1(a) to 1(f).

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to order dated 07.11.2019 (Annexure P-5), passed by learned Additional Civil Judge (Senior Division), Bholath (hereinafter referred to as – the Trial Court), whereby application moved by the plaintiff-petitioner seeking permission to lead secondary evidence by producing a photocopy of settlement (*Iqrarnama*) dated 23.05.1990 regarding domestic oral partition, has been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner filed suit for declaration that the petitioner is owner in possession of land measuring 03 kanals 09 marlas i.e. the suit property and mutation sanctioned in favour of respondent no.1 on the basis of order dated

21.03.1989 is illegal, wrong, void and ineffective. The suit land was previously owned by father of petitioner and respondents. He died on 18.11.1984. The suit land was inherited by his three sons i.e. petitioner, respondent no.1 and respondent no.2 in equal shares and mutation no.1184 dated 15.05.1985 was sanctioned in their favour. On 23.05.1990, the parties effected an oral family partition of the suit land along with the ownership of other land, which they all had inherited from their father. An agreement of memory of oral partition dated 23.05.1990 was reduced to writing, in which, land measuring 115 kanals 04 marlas including the suit property was given to the petitioner. Mutation no.1332 dated 29.05.1990 was also sanctioned in favour of the petitioner. The remaining land was also divided between the parties as per the aforesaid oral family partition. Respondent no.2, in his written statement, admitted the factum of oral family partition of the suit land as well as other lands inherited by the parties from their father. Respondent no.1, in his written statement, admitted that the suit property was owned by his father as co-sharer and after his death, the same was inherited by him and his two brothers.

3. Learned counsel for the petitioner further submitted that the suit land was recorded in the ownership of the petitioner on the basis of oral family partition settlement dated 23.05.1990 and the original document dated 23.05.1990 is in possession of respondent no.1. The petitioner had earlier moved an application before the learned Trial Court to call upon respondent no.1 to produce the original oral family partition document dated 23.05.1990 but he did not produce the same. Rather, he denied the execution of aforesaid settlement. The petitioner moved application for

secondary evidence by producing a photocopy of the above-mentioned settlement. The learned Trial Court dismissed the application on the ground that if the family settlement creates rights in the immovable property, the same is compulsorily registerable and ought to have been executed on a proper stamp and such unstamped and unregistered family settlement, which creates rights in the suit property, could not be proved by way of secondary evidence.

4. The petitioner also summoned Sadar Kanungo of the office of Deputy Commissioner along with register of mutations for the year 1990 but he deposed that the copy of document dated 23.05.1990 was not attached with the mutation.

5. It is further contended by learned counsel for the petitioner that if a document does not create a new right but is with regard to declaration of pre-existing right, then it is not required to be registered. Reliance in this regard is placed on judgments of Hon'ble Supreme Court passed in **Bhoop Singh vs. Ram Singh Major** reported as **1996 AIR (Supreme Court) 196**, **Ripudaman Singh vs. Tikka Maheshwar Chand** reported as **(2021) 7 Supreme Court Cases 446** and **Ravinder Kaur Grewal and others vs. Manjit Kaur and others** reported as **(2020) 9 Supreme Court Cases 706**.

6. Learned counsel for respondent no.1 has produced a photocopy of the document in question dated 23.05.1990 and has submitted that the said document is not legible. The same is taken on record. It is submitted that the document is insufficiently stamped and requires registration. The learned Trial Court had rightly held that no secondary evidence can be led to prove the said document since the same requires registration. Reliance has

been placed on a judgment of Hon'ble Supreme Court in **Bipin Shantilal Panchal vs. State of Gujarat – Criminal Miscellaneous Petition No.862 of 2001**, decided on 22.02.2001.

7. I have heard submissions made by learned counsel for the parties.

8. A Co-ordinate Bench of this Court, in **Ashok Kumar vs. Sudesh Rani and another – CR-8166-2018**, decided on 21.07.2023, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, has held that there is no provision for filing an application for permission to lead secondary evidence. The relevant extract of the said judgment reads as under :-

*“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 provisions 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.”

9. Thus, the parties are entitled to lead secondary evidence. The learned Trial Court has held that the family settlement, which creates rights in the suit property, could not be proved by way of secondary evidence. It is settled law if document is regarding declaration of the pre-existing rights, the same is not compulsorily registerable in view of Section 17 of the Registration Act, 1908. If any document, when produced in Court, is insufficiently stamped and objection is raised regarding deficiency of stamp duty, the Court would decide the same before proceeding further. The Court can allow the document to be read with the condition to pay the stamp duty along with some penalty. The learned Trial Court did not decide if the document was sufficiently stamped or not. Even from the photocopy of the document, it can be ascertained that the document dated 23.05.1990 was written on a stamp paper of Rs.5/-. The respondents can very well raise the

objection about insufficient stamp duty on the document when evidence would be led to prove the said document. In the case of **Bipin Shantilal Panchal** (*supra*), it is held by Hon'ble Supreme Court whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the Trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case, subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable, the Court can keep such evidence excluded from consideration. There is no illegality in adopting such a course. If the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further.

10. In the light of above discussion, the order passed by learned Trial Court is not sustainable in the eyes of law. Accordingly, the present revision petition is allowed. The impugned order 07.11.2019 (Annexure P-5), passed by learned Trial Court, is hereby set aside and the application moved by the plaintiff-petitioner seeking permission to lead secondary evidence by producing a photocopy of settlement (*Iqrarnama*) dated 23.05.1990 regarding domestic oral partition, stands allowed, subject to proof of its existence and not in his possession. If objection with regard to deficiency of stamp duty is raised, the Court shall decide the said objection before proceeding further. The Court can keep all other objections open, to be decided later. The question whether the document is admissible or not can be decided at the time of final stage of the case.

11. The revision petition stands allowed in the above terms. The

parties are directed to appear before the Trial Court on 04.09.2023.

12. Pending applications, if any, shall stand automatically disposed of along with this judgment.

August 01, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.