

(1983) 11 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 39 of 1983

Major Ishar Chand Kaushik	Vs	APPELLANT
Sh.Jai Gopal @ Palla @ Dharam Pal		RESPONDENT

Date of Decision : 30-11-1983

Acts Referred:

Citation : (1984) PLJ 560 : (1984) RRR 174

Hon'ble Judges : S.S.Kang, J

Advocate : Mr. B.M. Lall, Advocate., Advocates for appearing Parties

Judgement

S.S. Kang, J. (Oral)

1. This is a revision petition against the order dated 13.8.1982 of the learned Sub Judge 1st Class, Kharar, declining to exhibit the memorandum of partition produced by Major I.C. Kaushik, the plaintiff, during his evidence on the ground that the immovable property worth more than Rs. 100/ was sought to be transferred by this document and it required compulsory registration. Since the document had not been registered, it cannot be taken into evidence.
2. Brief facts giving rise to this revision petition are that the petitioner filed a suit for possession and recovery of rent against his tenant Jain Gopal. While appearing as his own witness the petitioner wanted to prove a memorandum of partition containing the terms of family settlement. On an objection raised by the opposite side, the learned trial Judge has held that the document cannot be exhibited. Aggrieved by this order, the petitioner has filed this revision petition.
3. Despite service, the opposite party has not chosen to appear.
4. Learned counsel for the petitioner has cited before me two decisions in Som Parkash v. Sri Udagin Panchayat Akhara Bara, A.I.R. 1983 Patna 35 and Sanjan Investments Ltd. v. Nepal Chandra, A.I.R. 1981 Calcutta, 327, in support of the contention that this revision petition against an interim order declining to admit or exhibit a document is competent. These two judgments indeed support the

proposition canvassed by the learned counsel for the petitioner.

5. He has then argued that the memorandum of partition sought to be exhibited even if not registered could be used for proving two things : (i) the factum of partition, and (ii) nature of possession of the disputed premises. This view finds support from a recent judgment of this Court in *Rikhi Ram v. Sada Ram etc.*, 1976 C.L.J. (Civil) 594. After examining the case law on the subject. Goyal, J. has observed as under :

``Relying on the above noted authorities, I hold that the factum of partition and the nature of possession of the defendants of the properties in their possession could be proved by the oral and other documentary evidence relied upon by the trial Court.'''

6. The above observations fully apply to the facts of the present case. The memorandum of partition could surely be used to prove the factum of partition and nature of possession. The learned trial Judge has acted with material irregularity in the exercise of his jurisdiction by refusing to exhibit the document. This revision petition is allowed, the order of the trial Judge dated 13.8.1982 is quashed and the memorandum of partition is directed to be exhibited. It is, however, made clear that this document can be used by the plaintiff for the limited purpose of proving the factum of partition and the nature of possession. No costs.