
(1988) 01 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 493 of 1986

Narpinder Singh and others	Vs	APPELLANT
Vishwa Mittar and others		RESPONDENT

Date of Decision : 08-01-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 16

Citation : (1988) 01 P&H CK 0103

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Advocate : G.R. Majithia, with Mr. A.V. Pali, for the Appellant; Ashok Bhan with Mr. A.K. Mittal, for the Respondent

Judgement

R.N. Mittal, J.—This revision petition has been filed by defendant Nos. 1 to 5 against the order of Subordinate Judge 2nd Class, Zira, allowing defendant Nos. 6 to 9 to produce the copy of the sale dated 15th October, 1928 executed by Nikke Shah and Fajja Shah in favour of Sadhu Ram and Mehtab Mal.

2. Briefly the facts are that Vishwa Mittar plaintiff instituted a suit for possession of the land in dispute by removal of the Malba of the wall erected by defendant Nos. 1 to 5 and hand-pump. After the plaintiff and defendant Nos. 1 to 5 had closed their evidence, defendant Nos. 6 to 9 filed an application under Order 18 Rule 16 of the CPC for allowing them to produce the sale deed dated 15-10-1928. It is alleged by the said defendants that they are succession-in-interest of the said Sadhu Ram and Mehtab Mal. It is further pleaded by them that they had applied for the certified copy of the register maintained in the office of the Sub-Registrar and they were able to get the certified copies after the closure of the evidence, on 15-12-1985. Consequently, they stated that they could not produce the copy when the evidence was closed by them.

3. The application was opposed by defendant Nos. 1 to 5. They Inter alia pleaded that the registration clerk appeared in the witness-box for the said defendants and he stated that the register maintained in the office of the Sub-Registrar had

been damaged and the contents of the sale deed were illegible they consequently. Prayed that the application was liable to be dismissed, the learned Subordinate Judge observed that the copy was admissible u/s 57(5) of the Registration Act. Consequently, he accepted the application and exhibited the copy as DX". Defendant Nos. 1 to 5 have come up in revision against the said order to this Court.

4. It is contended by Mr. Majithia, the learned counsel for the petitioner that the copy of the document could not be exhibited as it was not admissible u/s 57(5) of the Registration Act. He further submits that under the aforesaid section, the copy can be used for the purposes of proving the contents of the documents but unless the document is duly proved it cannot be exhibited. In support of his contention he places reliance on *Badhawa Ram and another v. Akbar Ali* AIR 1927 Lah. 17.

5. Mr. Ashok Bhan, Advocate on the other hand has argued that the respondents have already been given permission to lead secondary evidence by the Subordinate Judge. He has in order to prove the document produced the son of the petition writer who scribed the sale deed. He further submits that the clerk of the Sub-Registrar stated that only a portion of the document was not legible and consequently he did not give the copy of the documents when he was examined. However, the defendants obtained the photostat copy of the register from the Sub Registrar and produced the same along with this application.

6. I have heard the learned counsel for the parties at a consideration length.

7. The learned court while exhibiting the document did not take into consideration the facts which have been brought to my notice by Mr. Ashok Bhan. It was observed in *Badhawa Ram's* case (*supra*) that it is well settled that certified copies of registered deeds evidencing private transactions are admissible only when a case for reception of secondary evidence has been made out. Consequently the document could not be exhibited as has been done by the learned Court. Without expressing any opinion as to whether the document should be exhibited or not, it will be proper that the matter may be decided afresh by the learned trial Court after taking into consideration the evidence already on record. Consequently, I accept the revision petition, set aside the order exhibiting the document and direct the trial Court to decide the matter afresh after hearing the learned counsel for the parties. The parties are directed to appear in the trial court on 25-1-1986. No order as to costs.