
(1988) 01 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 493 of 1986

Narpinder Singh and Others

APPELLANT

Vs

Vishwa Mittar and Others

RESPONDENT

Date of Decision : 08-01-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17
Registration Act, 1908 — Section 57(5)

Citation : (1988) 01 P&H CK 0095

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

Bench : Single Bench

Judgement

R.N. Mittal, J.—This revision petition has been filed by Defendants No. 1 to 5 against the order of Subordinate Judge 2nd Class, Zira, allowing Defendants No. 6 to 9 to produce the copy of the sale deed dated 15.10.1928, executed by Nikke Shah and Fajje 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 ejected by Defendants No. 1 to 5 and handpump. After the Plaintiff and Defendant No. 1 to 5 had closed their evidence, Defendants No. 6 to 9 filed an application under Order 18 Rule 17 of the Code of Civil Procedure, for allowing them to produce the sale deed dated 15.10.1928. It is alleged by the said-Defendants that they are successors-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 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 Defendants No. 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 learner 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". Defendants No. 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 Petitioners that the copy of the document could not be exhibited as it was not admissible u/s 57(5) of the said Registration Act. He further submits that under the aforesaid section, the copy can be used for the purposes of proving the contents of the document but unless the document is duly proved, it cannot be exhibited. In support of his contention, he places reliance on *Badhawa Ram and Anr. 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 Petitioner 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 document when he was examined. However, the Defendants obtained the photostat copy of the register from the office of the Sub Registrar and produced the same alongwith this application.

6. I have heard the learned Counsel for the parties at a considerable 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 is as 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 25.1.1988. No order as to costs.