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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2235 of 2015

Date of decision: March 31, 2015

Avtar Singh Nanra

.....Petitioner

Versus

Amrik Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ravi Kant, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 24.12.2014 (Annexure P-6), whereby application moved by the petitioner to prove the agreement to sell in question by leading secondary evidence, was dismissed.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

Petitioner has filed suit for recovery against the respondent on the basis of agreement to sell dated 15.09.2011. The case of the petitioner is that the respondent had executed agreement to sell dated 15.09.2011 in his favour qua the land measuring 54 Kanals 9 Marlas . In this regard, respondent had received ₹20,00,000/- in cash from the petitioner. The sale deed was to be executed on or before 20.07.2012 and petitioner was required to pay another sum of ₹65,00,000/- on or before 14.10.2011. Infact, respondent

was not the owner of the property in question and had executed the agreement to sell in question in favour of the petitioner on the basis of agreement to sell dated 01.08.2011 in favour of the respondent by the owners. Petitioner visited India before 14.10.2011, but the respondent sought more time from the petitioner to complete the documents. On the assurance of the respondent, petitioner again visited India in July, 2012, but the respondent sought more time to complete the documents. Since the respondent had failed to do the needful, petitioner was entitled to seek recovery of the double the amount of the earnest money paid by him to the respondent.

Respondent in his written statement admitted the execution of the agreement to sell in question. It was averred that petitioner infact, had failed to make the payment of ₹65,00,000/- to the respondent in terms of the agreement to sell dated 15.09.2011. Infact, petitioner had requested the respondent to return his earnest money and had rather, threatened the respondent that he would commit suicide in case, earnest money is not returned to him. Respondent returned ₹20,00,000/- to the petitioner on 14.10.2011 in the presence of Ram Swaroop. At that time, original agreement to sell was cancelled and writing to this effect was also executed on the backside of the agreement to sell. Photostat copies of the said agreement to sell as well as its cancellation were got

done and were got attested from Notary Public and thereafter, the original agreement to sell in question was destroyed.

Thus, in the present case, although, execution of agreement to sell in question is not in dispute, but the existence of the original agreement to sell in question is in dispute. The case of the petitioner is that the original agreement to sell in question was not traceable and it was possible that same might have been stolen by the respondent, whereas the case of the respondent is that the original agreement to sell in question was destroyed after the earnest money was returned by the respondent to the petitioner and photocopy of the agreement to sell in question as well as its cancellation was duly got attested from Notary Public. In the present case, learned trial Court rightly came to the conclusion that the petitioner had failed to establish that the original agreement to sell in question had been lost. Therefore, the petitioner could not be allowed to prove the same by leading secondary evidence.

In the facts and circumstances of the present case, impugned order calls for no interference.

Dismissed.

**(SABINA)
JUDGE**

March 31, 2015

m.singh