

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 2794 of 2011 (O&M)
Date of Decision: 27.4.2015.**

Som Nath

.....Petitioner

Versus

Brij Bala and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Arun Jindal, Advocate
for the petitioner.

Mr. M.K.Garg, Advocate
for respondent No. 1.

Mr. Munfaid Khan, Advocate
for respondents No. 2(1) to 2(4).

None for respondent No. 3.

SABINA, J.

Petitioner has filed this petition challenging the order dated 10.2.2011 whereby application moved by the petitioner for permission to lead secondary evidence, was dismissed.

Learned counsel for the petitioner has submitted that the existence of the partition deed in question was not in dispute. Therefore, petitioner was liable to be granted opportunity to prove the partition deed in question by leading secondary evidence. In support of his arguments, learned counsel has placed reliance on '***Sobha Rani versus Ravi Kumar 1999(1) RCR (Civil) 98***' and '***Ashok Kumar Sachdeva versus Harish Malik 2007(4) R.C.R. (Civil) 311***'.

Learned counsel for respondent No. 1, on the other

hand, has opposed the petition and has submitted that even the photocopy of the document, now sought to be proved by secondary evidence, had not been produced on record. In support of his arguments, learned counsel has placed reliance on (i) '**Mukesh Kumar alias Motta versus State of Haryana, 2011(1) R.C.R. (Civil) 675**' (ii) '**Santosh Kumar versus Shadi Lal Manchanda and others, 2011(2) PLR 241**' (iii) '**Smt. J. Yashoda versus Smt. K.Shobha Rani, 2007(2) R.C.R. (Civil) 840**' (iv) '**Banarsi Dass versus Om Parkash and others 2005(2) R.C.R. (Civil) 72**' (v) '**Ashok Dulichand versus Madhavlal Dube and another 1975 AIR (SC) 1748**'.

In the present case, petitioner had filed suit for declaration that he was owner in possession of the suit land along with proforma defendant No. 3. During the pendency of the suit, petitioner moved an application for permission to prove the agreement dated 18.7.1998 by way of secondary evidence. The Trial Court while dismissing the application has held as under:-

“8. It has been pleaded by plaintiff/applicant in the present application that the original agreement dated 18.7.1998 was handed over to witness of this agreement namely Suresh Chander S/o Ishwar Chander, R/o Safidon but now the same has been lost/misplaced by said Suresh Chander and that the said agreement could not be traced out despite best efforts. The said Suresh Chander has not been examined by the plaintiff/applicant to show that the original agreement dated 18.7.1998 was ever handed over to him or that he has lost/misplaced the original agreement dated 18.7.1998. For seeking

permission to lead secondary evidence, loss of original document must be proved and in the present case, loss of original document i.e. original agreement dated 18.7.1998 is not proved. Even, no copy of original agreement dated 18.7.1998 placed on record by the plaintiff/applicant. Only photostat copy of register of Notary Public has been placed on record.”

The reasons given by the Trial Court while dismissing the application are sound reasons. It has been noticed by the Trial Court that even copy of the agreement dated 18.7.1998 had not been placed on record by the petitioner. Only the photocopy of the register of Notary Public had been placed on record. The person, to whom the agreement had been allegedly handed over after it was executed, has also not been examined during trial. Petitioner has already availed 16 opportunities to lead his evidence. In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

April 27, 2015
Gurpreet