

In the High Court of Punjab and Haryana at Chandigarh.

**C R No. 4359 of 2013 (O&M)
Decided on 02.02.2015**

Roop Singh

--Petitioner

Vs.

Krishan Kumar and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Whether Reporters of Local Newspapers may be allowed to see the judgment ?

To be referred to Reporters or not ?

Whether judgment should be reported in the Digest ?

Present: Mr. Rajinder Goyal, Advocate, for the petitioner

Mr.Rakesh Gupta,Advocate, for respondent Nos. 3 to 8

Rakesh Kumar Jain,J: (Oral)

The petitioner is aggrieved against the order dated 03.7.2013, dismissing his application to prove the agreement to sell by way of secondary evidence.

Shorn of unnecessary details, the application filed by the petitioner was initially dismissed by the trial Court on 8.3.2010 and the revision petition filed against it was also dismissed on 27.7.2011 with the direction to the trial Court to frame an issue as to “*whether or not the plaintiff can be permitted to prove the agreement to sell dated 07.1.2000*”

alongwith endorsement/writing dated 22.10.2001 and application dated 30.11.2001 by way of secondary evidence ?.

In compliance of the order of this Court, the trial Court framed the issue on 28.4.2011 to the effect that:-

“whether the applicant/petitioner is entitled to prove the agreement to sell dated 07.1.2011 by way of secondary evidence ?

The petitioner examined four witnesses, namely, Mastan Singh as PW-1; himself as PW-2; Shyam Lal Deed Writer as PW-3 and Ranjeet Singh as PW-4, whereas the defendants examined Basau Ram as DW1; Bhupinder Singh as DW-2 and Navdeep Gupta, Handwriting and Fingerprint Expert as DW-3.

The trial Court decided the application, appreciating the evidence on three grounds, namely (i) the existence of the document (ii) the loss of the documents and (iii) that the photo copy was made and compared with the original document. The trial Court had also found that the petitioner has failed to prove the existence, loss and that the said document was compared with the original and dismissed the application.

Learned counsel for the petitioner has referred to the judgment of this Court in the case of **Simarpal Singh Vs. Hakam Singh** 2009 (2) PLR 562 to contend that when the petition is filed for producing the secondary evidence, nothing more is required to be done except stating one of the grounds as required under Section 65 of the Evidence Act, to justify the reception of secondary evidence and whether the grounds do really exist or not could be tested in cross examination only, if a base is laid in the examination-in-chief.

Learned counsel for the respondent has, however, submitted

that the petitioner is too late to rely upon the judgment in the case of **Simarpal Singh** (Supra) because his application was initially dismissed and in the revision, this Court thought it proper to provide opportunity to both the parties to lead evidence to prove not only the existence but also loss of the original document in order to prove the said document by way of secondary evidence.

The learned Court below has dealt with the evidence led by both the parties thread-bare and has found that the petitioner has failed to prove the existence, loss and comparison of the original document inasmuch as nothing has been mentioned about the manner in which the original document was lost.

In view of the above, I do not find any reason to hold that the impugned order was passed erroneously in exercise of jurisdiction by the trial Court, for the purpose of interference in this revision petition by this Court.

Dismissed.

02.02.2015
rr

(Rakesh Kumar Jain)
Judge