

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 4986 of 2015
Date of decision : September 15, 2015

Rajinder

..... Petitioner

Versus

Hemchand @ Hemchander and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. S. Mor, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 15.5.2015 (Annexure P-5) whereby, the respondents-plaintiffs have been permitted to lead secondary evidence in respect of agreement to sell dated 25.7.2011.

Learned counsel appearing on behalf of the petitioner-defendant submits that preceding to the filing of the suit, the respondents-plaintiffs appeared to have sent a legal notice calling upon the petitioners-defendants to perform their part of the agreement to sell and there is no whisper in the legal notice with regard to the alleged handing over of original agreement to sell to Rajesh and the aforementioned story has been coined for the first time in the suit. It is un-imaginable that an amount of ₹1 crore has

been paid that too in cash without handing over the original agreement to sell, in the manner as has been adopted. Thus, submits that the trial court has committed illegality and perversity in not even complying with the provisions of Section 65 of the Indian Evidence Act, 1872 as loss and existence of the document is to a condition precedent, for permitting a party to lead secondary evidence.

I have heard learned counsel for the petitioner and appraised the paper book.

The suit is slated for respondents-plaintiffs' evidence. Vide the impugned order dated 15.5.2015 (Annexure P-5) the respondents-plaintiffs have been permitted to prove the agreement to sell aforementioned by way of secondary evidence. Though, there is a passing reference in the impugned order that it will subject to its proof and admission but the fact remains that the trial court has not complied with the provisions of Section 65 of the Indian Evidence Act, 1872 by not putting a caveat viz-a-viz existence and proof of the agreement to sell. It is an essential requirement that for the purpose of granting permission to a party to prove the document by way of secondary evidence, the loss and existence has to be a condition precedent. In the instant case, the petitioner-defendant has vehemently denied the execution, much less existence of the agreement to sell.

In such a situation, I deem it appropriate to modify the order by holding that the respondents-plaintiffs would be permitted to lead secondary evidence, but before that they have to

lead evidence with regard to existence and loss.

With the aforementioned modification, the revision
petition stands disposed of.

(AMIT RAWAL)
JUDGE

September 15 , 2015
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