

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

Civil Revision No.4899 of 2014
Date of Decision: November 27, 2015

Ram Karan Khichar

...Petitioner

Versus

Mangal Deep Cooperative House Building Society Ltd. Hisar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Sudhir Mittal, Advocate,
for the petitioner.

Mr.Anurag Jain, Advocate,
for respondent No.1.

Mr.Amit Singla, Advocate,
for respondent No.5.

AMIT RAWAL, J. (Oral)

Petitioner-defendant No.5 is aggrieved against the order dated 8.7.2014 (Annexure P-8), whereby the application seeking permission of the Court to prove the agreement dated 18.4.1991 (Mark-A) and resolution dated 16.4.1991 (Mark-B) by way of secondary evidence, has been declined.

Mr.Sudhir Mittal, learned counsel appearing on behalf of the petitioner, in support of his grounds, raised the following submissions:-

- a) The suit filed by the respondent-plaintiff was not maintainable as they are allottees of the plots by the Jan Sewa Co-operative House Building Society Ltd., which had entered

into an agreement with the respondent-plaintiff;

b) The witness from the aforementioned Society, i.e., Jan Sewa was summoned and he brought on record photocopy of the agreement, which was marked as 'A". He further stated that the original had been lost and in this regard DDR No.15 dated 14.2.2012 had been lodged.

c) The agreement, aforementioned, is essential and necessary for the adjudication of the lis between the parties as the injunction against the true owner cannot be granted and, thus, prays that the impugned order is not sustainable in the eyes of law.

Mr.Anurag Jain, learned counsel appearing on behalf of respondent No.1 submits that petitioner-defendant No.5 summoned the witness from the plaintiff-Society as DW-9, who candidly denied the existence of the agreement and resolution (Annexures P-4 & P-5) and rather stated that it is a forged document. Even DW-10 Parveen Sharma, in cross-examination to a specific question, also answered that he had never seen the documents. There is an apparent collusion between defendant No.5 and Jan Sewa Society from whom they are realising the title. Moreover, it is not a suit for title. It is merely an injunction suit. The aforementioned document is not essential and necessary for the adjudication of the matter.

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

For the purpose of leading secondary evidence, two important events are required to be proved, i.e., existence and loss of the document. It is settled law that photocopy of the document cannot be permitted to be produced on record by way of secondary evidence. In case, the agreement had actually been entered into between the respondent-plaintiff and Jan Sewa Society, the respondent-plaintiff would be having the second copy or

carbon copy of the same. However, an attempt was made to prove the same, but the witnesses of the respondent-plaintiff, i.e., DW-9 and DW-10 feigned ignorance of the existence of the aforementioned agreement. Once the aforementioned agreement has not been found to be in existence, secondary evidence cannot be permitted. In my view, the view expressed by the trial Court in declining the application cannot be said to have been without jurisdiction.

Even in the written statement, no such agreement has been pleaded, in essence, the secondary evidence sought to be placed on record, even if granted, would not be taken into consideration being beyond pleadings. The judgment cited by the learned counsel for the petitioner, i.e., **Nawab Singh Versus Inderjit Kaur, (1999) 4 SCC 413** is based upon the facts and circumstances of the case for the reason that the other party, which sought the secondary evidence, categorically stated that the original is in possession of the respondent and he did not produce the same. It is not the position in the present case, therefore, the said judgment does not apply to the facts of the present case.

In view of what has been noticed above, the impugned order is upheld. The revision petition is accordingly dismissed.

November 27, 2015
ramesh

(AMIT RAWAL)
JUDGE