

CR No. 4966 of 2014        -:1:-

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

**CR No. 4966 of 2014(O&M)  
Date of Decision: November 30, 2015**

**Jagsir Singh**

**.... Petitioner**

**vs.**

**Devinder Kumar & others**

**.... Respondents**

**CORAM: HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:** Mr. Sunny K. Singla, Advocate  
for the petitioner.

Mr. Anil Kumar Garg, Advocate  
for the respondent.

1. *Whether Reporters of Local Newspapers 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?*

**Kuldip Singh J.(Oral)**

Impugned in the present revision is the order dated 02.07.2014 passed by learned Additional Civil Judge(Senior Division), Malerkotla vide which the application of the plaintiff to lead secondary evidence regarding agreement to sell dated 02.12.1997 by way of secondary evidence was allowed, subject to just legal

exceptions.

As per the case of the plaintiff set out in the plaint, father of the defendant namely Amarjit Singh agreed to sell his land measuring 6 Bighas 15 Biswas comprising of khewat-khatauni No.141/216 khasra No.1050/596/ 2-5 Chahi and 1054/ 597/ 4 10 Chahi, Unit 2 to the plaintiff (i.e. at the rate of Rs. 45,000-00 per bigha). Rs. 1, 53, 750/- was paid to Amarjit Singh as earnest money on 02.12.1997. Accordingly, agreement dated 02.12.1997 was executed by said Amarjit Singh(now deceased). The agreement was thumb marked by said Amarjit Singh. Sale deed was to be executed within two months after getting the stay order vacated which was obtained by Gulzar Singh s/o Ram Singh and Usha Rani wife of Mohan Lal and also after the suit land was redeemed from all sort of encumbrances. It was stated in the plaint itself that the original agreement dated 02.12.1997 was lost regarding which Rapat No.17 dated 10.07.2008 was lodged by the plaintiff in Roznamcha of Police Station City, Malerkotla. Thereafter suit was filed on 04.09.2008. At the stage of the evidence an application for permission to lead secondary evidence was filed on the ground that the original agreement to sell is not traceable.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the appellant/defendant has argued

that in this case according to the plaintiff original agreement bears the thumb impression of deceased father of the petitioner/defendant. Defendant in the written statement has denied the execution of the agreement and pleaded forgery. Therefore, comparison of thumb impression could be made only with the original. It is further stated that the photostat copy cannot be entertained as secondary evidence. In this regard reliance has been placed on the authority of this Court in “**Joginder Singh Grewal Vs. Gurmeet Singh Grewal and others 2014(4) Law Herald 3188**” and of the Hon'ble Supreme Court in case of “**Smt. J. Yashoda Vs. Smt. K. Shobha Rani, 2007(2) R. C. R. (Civil) 840**”. Further reliance is also placed on authority of this Court in “**Mukesh Kumar alias Motta Vs. State of Haryana, 2011(1) RCR (Civil) 675**”.

On the other hand learned counsel for the respondent has relied upon the authorities of this Court as “**Jawahar Lal Vs. Surinder Singh & others 2014(2) Law Herald 1815, Prem Lata Vs. Dwarka Parsad & others 2014(1) ICC 785 & Satyajeet Singh Bedi Vs. Arun Juneja & others 2010(3) PLR 275**”.

Learned counsel for the appellant has further argued that DDR was lodged just few weeks before the filing of the suit . The agreement is of 1997 and the suit was filed in 2008 i.e after 11 years. The original agreement was in possession of the plaintiff. In the application he has not stated as to how and when the agreement

was lost. Further it is stated that photocopy alleged to be of the original will can not prove that the original is genuine and authenticated. The petitioner will also be deprived of his right of getting the alleged thumb impression of his father compared with his standard thumb impressions.

After going through the contentions of the parties, I am of the view there are serious contentions raised by both the parties regarding existence of the original document. Many a time, the original is destroyed after the same has been satisfied. There may be some other cases where there can be allegation of forgery. Therefore, admittedly the vital rights of the defendant are involved in the present case.

After considering the rulings of learned counsel for both the parties and considering facts of the present case, I am of the view that the impugned order is not sustainable in the eyes of law . The lower Court should first examine the evidence to satisfy itself whether the original ever existed or if existed whether same was satisfied or lost as claimed by the plaintiff and thereafter the same can be admitted into evidence.

A perusal of agreement shows that it is not known who had scribed the agreement. There is only endorsement of sale of stamps by the stamp vendors.

In such circumstance, impugned order is set aside the

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lower Court is directed to consider all the aspects of the case and pass a fresh order.

Revision is allowed accordingly.

**November 30, 2015**  
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**(KULDIP SINGH)**  
**JUDGE**