

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

Civil Revision No.5254 of 2015 (O&M)

Date of decision: 30.10.2015

Gopal Singh and another

.....Petitioners

Versus

Hanuman Godara and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ajay Jain, Advocate,
for the petitioners.

Ritu Bahri, J.

Challenge in this petition is to the order dated 15.07.2015 (Annexure P-9) passed by the Civil Judge (Senior Division), Sirsa, whereby application filed by plaintiffs-respondent Nos.1 and 2 under Section 65 of the Indian Evidence Act, 1872 for permission to produce secondary evidence with regard to agreement dated 15.09.2007 and 17.09.2007, has been allowed.

Hanuman Godara and Krishan Godara-plaintiffs (respondent Nos.1 and 2 herein) filed a suit for possession by way of specific performance of agreement to sell dated 15.09.2007 and 17.09.2007 in respect of land measuring 126 Kanals 7 Marlas, situated in the area of village Allanoor, Tehsil and District Sirsa with consequential relief of permanent injunction restraining defendant Nos. 4 and 5 from alienating the suit land. It was submitted that with the intervention of Gopal Singh-defendant No.4 (petitioner No.1 herein), Chand Karan-defendant No.1 had

agreed to sell the land in dispute to the plaintiffs. The land belonging to

defendant No.1-Chand Karan and his sisters namely Smt. Roma Bhalla and Smt. Ronika Shante-defendant Nos. 2 and 3 was to be sold for a total sum of Rs.22 lacs. Rs.1 lac was paid as earnest money on 15.09.2007 after preparation of agreement to sell. Thereafter, defendant No.1, acting on his behalf as well as on behalf of his sisters i.e. defendant Nos. 2 and 3, got an agreement to sell drafted from a lawyer in favour of the plaintiffs-respondent Nos. 1 and 2 and proforma defendant-Sushil Kumar at Panchkula on 17.09.2007. Gopal Singh-defendant No.4 was a property dealer and through him, defendant No.1 had started demanding more earnest money. Thereafter, on 01.01.2008, a sum of Rs.5 lacs was paid to defendant No.1 at Panchkula. In this regard a receipt was got typed at the back of the agreement, which was duly signed by defendant No.1 and witnessed by his son Dhruv Ahuja. Subsequently, the plaintiffs came to know that defendant No.4-Gopal Singh got executed a sale deed executed in his favour qua land measuring 16 Kanals. Another sale deed with regard to land measuring 110 Kanals 7 Marlas was got executed in favour of defendant No.5-Smt. Mittu Singh on 03.06.2008. Defendant No.4 also got a sale deed executed with regard to 8 Kanals of land in favour of Sushil Kumar-proforma defendant. As per plaintiffs, on the agreed date i.e. 27.06.2008, they asked defendant Nos. 1 to 3 to get the sale deed executed on payment of balance sale consideration, but they had failed to do so, which constrained them file a suit.

During the pendency of suit, on 04.05.2011, defendant Nos. 4 and 5 filed an application seeking direction to the plaintiffs to place on record original agreement to sell along with other related documents, as this would enable them to file a detailed reply to the averments made in the suit/plaint.

submitting that the original agreement was in possession of Sushil Kumar-proforma defendant and he had connived with the remaining defendants. It was stated that the plaintiffs were in possession of photocopy of the original agreement. As per Sushil Kumar, he had handed over the original agreement to defendant No.4-Gopal Singh at the time of registration of sale deed. On 19.04.2012, defendant Nos. 4 and 5 filed another application seeking direction to the plaintiffs to place on record original writing dated 15.09.2007. Plaintiffs filed reply to this application stating that these documents were in the possession of Sushil Kumar, who had connived with Gopal Singh-defendant No.4.

Finally, on 13.01.2014, plaintiffs-respondent Nos. 1 and 2 filed an application under Section 65 of the Indian Evidence Act, 1872 for permission to produce secondary evidence with regard to agreement(s) dated 15.09.2007 and 17.09.2007, which had been allowed by the trial Court vide impugned order dated 15.07.2015 (Annexure P-9).

Learned counsel for the petitioners has argued that there was no rough draft agreement dated 15.09.2007 along with agreement dated 17.09.2007 with defendant No.4-petitioner. The assertions made by the plaintiffs-respondent Nos. 1 and 2 are false and fabricated. The plaintiffs, as per amended provisions of Code of Civil Procedure, were required to attach the alleged writing dated 15.09.2007 and agreement to sell dated 17.09.2007 with the plaint. In the suit, they have not stated that the above mentioned original documents were in possession of Sushil Kumar. This case had been made out in the application for leading the secondary evidence. Once, the plaintiffs had admitted that they had paid Rs.5 lacs to defendant No.1 on 01.01.2008 and got a receipt signed from him on on the back of agreement

original documents were handed over to defendant Nos. 4 and 5 (petitioners).

On the other hand, while allowing the application, it has been observed that Sushil Kumar-proforma defendant had made a statement through his counsel on 16.09.2013 that above document was handed over to Gopal Singh-defendant No.4. Once, the proforma defendant had admitted that the original documents were in the custody of Gopal Singh, the application has been rightly allowed.

Another fact, which can be taken into consideration is that after executing the agreement to sell in question, Rs.6 lacs had been accepted by defendant No.1. A sum of Rs.1 lac was paid on 15.09.2007 and Rs.5 lacs were paid on 01.01.2008 at Panchkula. The stipulated date for execution and registration of the sale deed was 27.06.2008 and before this date, defendant No.4 (petitioner No.1) got executed a sale deed in respect to 8 Kanals of land with Sushil Kumar-proforma defendant. Apart from this, one more sale deed with regard to 16 Kanals of land was executed in favour of Gopal Singh and another sale deed for remaining land i.e. 110 Kanals 7 Marlas had been executed in favour of defendant No.5-Smt. Mittu Singh, wife of Gopal Singh. Plaintiffs, in their reply dated 08.08.2011, had submitted that the original agreement to sell was in possession of Sushil Kumar, who had connived with the remaining defendants and only photocopies of the same were in their possession.

In the above background, once counsel for defendant No.6-Sushil Kumar had made a statement on 16.09.2013 that the original documents were handed over to Gopal Singh, the impugned order allowing the plaintiffs to lead secondary evidence with regard to agreements dated

Hence, the present application being devoid of any merit, is
hereby dismissed.

30.10.2015
ajp

(RITU BAHRI)
JUDGE