

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

CR No.5450 of 2015.

Date of Decision: 24.08.2015.

Pawan Kumar and another

....Petitioners.

VERSUS

Bimal Rai and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Abhishek Arora, Advocate for the petitioners.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 25.03.2015 passed by learned Civil Judge (Junior Division), Fatehgarh Sahib, vide which the application filed by the respondents for additional evidence was allowed.

The submissions made by learned counsel representing the petitioners have been considered.

Learned counsel for the petitioners argued that the application dated 13.02.2015 of the respondents seeking permission to lead secondary evidence with regard to a sale deed alongwith writing on the reverse page of the sale deed, had been wrongly allowed by learned trial Court. Unless the

respondents could prove existence of the original document, there was no occasion for the trial Court to allow them to produce secondary evidence regarding the document. Learned counsel also contended that after secondary evidence had been allowed to the respondents, numerous opportunities have been availed by them for adducing their evidence but not a single witness has been examined till date. Despite the objection being raised by the petitioner, no step has been initiated by the trial Court to close the evidence of the respondents.

As regards, the order dated 25.03.2015 vide which trial Court allowed the respondents to produce secondary evidence with regard to the sale deed, it transpires from the order itself that the original sale deed is in possession of the petitioners-plaintiffs and they had failed to produce the same. The respondents had only a photostat copy of the document. Though the petitioners resisted the application filed by the respondents but they nowhere denied that the original document was in their possession. It was not so stated by them in the present petition as well. Sub clause (a) of Section 65 of the Indian Evidence Act, 1872 postulates that secondary evidence may be given of the existence, condition, or contents of a document when the original is shown or appears to be in possession or power of a person against whom the document is sought to be proved or any other person out of reach or not subject to the process of the Court or of any person legally bound to produce it and when after the notice mentioned in Section 66 such person does not produce it.

It appears that learned Trial Court lost the track by observing in

the last paragraph of the order that the original document was not traceable by the applicants-defendants whereas it observed in the first paragraph of the order that the document was in possession of the plaintiffs-petitioners and they have failed to produce the same.

In any case, there appears no illegality or perversity in the order dated 25.03.2015 passed by learned trial Court allowing the respondents to lead secondary evidence with regard to execution and contents of the sale deed alongwith the writing on the reverse page of the said document.

Coming to the prayer of the petitioners that numerous opportunities have been availed by the respondents after their application for leading secondary evidence was allowed, the orders of learned trial Court reproduced in the petition does not indicate that they had raised objection to the adjournment at any point of time. Anyhow, learned trial Court is directed to avoid unnecessary adjournments and the petitioners will be at liberty to seek appropriate remedy in that regard before learned trial Court.

With the above observations, this petition is dismissed.

(SNEH PRASHAR)
JUDGE

24.08.2015.
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