

CR-7063-2014 (O&M)

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

**CR-7063-2014 (O&M).
Decided on: July 20, 2015.**

Bhim Sain

..... Petitioner(s)

Versus

Hans Raj and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.P.R.Yadav, Advocate,
for the petitioner.**

**Mr.Mukesh Yadav, Advocate,
for respondent Nos.13 & 14 .**

M.M.S. BEDI, J (ORAL)

Notice issued to LR's of respondent No.1 through trial Court counsel stands served. No one is present on behalf of these respondents. They are proceeded against ex parte.

This is a revision petition against the order dated 20.9.2014, Annexure P2, by virtue of which the objection of the defendant- respondent Nos.13 & 14 during examination of PW. 2 Ishwar Singh has been sustained directing that the agreement of sale EX.PW.2/B produced along with affidavit cannot be exhibited in absence of scribe.

Counsel for the petitioner has submitted that execution of a document attested by a witness can be proved by the attesting witness. He has placed reliance on Section 68 of the Indian

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Evidence Act.

I have heard learned counsel for the petitioner and considered the facts and circumstances of the case. The plaintiff appears to have filed a suit for specific performance of an agreement of sale dated 13.5.2001 alleged to have been executed in favour of the plaintiff by Hans Raj defendant No.1. The agreement appears to have been produced by one of the attesting witnesses PW.2 Ishwar Singh by appearing in the Court as per order 18 Rule 4 CPC. The proviso of Order 18 Rule 4 CPC, gives a discretion to the Court to pass an order regarding the documents which are filed along with affidavit under Order 18 Rule 4 CPC regarding their proof and admissibility.

Prima facie, agreement of sale attested by the executor can be proved by one of the attesting witnesses in accordance with law. The admissibility, reliability and relevance of the document is always open to be considered by the Court at the time of final appreciation of the evidence, finally determining the rights of the parties on the basis of the pleadings and the evidence.

In the present case, the trial Court seems to have formed a wrong opinion that the document could not have been proved by attesting witness. The order dated 20.9.2014 is hereby set aside. It is ordered that document Annexure PW2/B will form part of the record subject to its admissibility, relevance, authenticity and proof, to be finally determined at the time of the final arguments in

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context to the other evidence.

The petition is disposed of with modification of the order dated 20.9.2014 to the extent as stated above.

July 20, 2015.
rka

(M.M.S. BEDI)
JUDGE