

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1728 of 2016 (O&M)

Date of Decision: 15.03.2016

Ramesh Chander

... Petitioner(s)

Versus

Vinod Verma and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 6.1.2016, passed by learned Civil Judge (Junior Division), Panchkula, whereby application under Section 63 of the Indian Evidence Act, 1872, filed by plaintiff for leading secondary evidence in respect of agreement of sale dated 27.7.2009, was allowed.

Relevant facts of the case that plaintiff moved an application for leading secondary evidence on the ground that he has lost the agreement of sale somewhere around 30.9.2015. The matter was reported to the police vide DDR dated 2.10.2015 and as such sought permission to lead secondary evidence. The said application was

contested by the defendant and the Court below, after considering the contentions, allowed the application.

Learned counsel for the petitioner, while challenging the impugned order, mainly took the plea that respondent No.1 failed to prove the loss of document and also failed to prove that he was allowed to lead secondary evidence on the basis of photocopy of agreement of sale. In support of his arguments, reliance was placed upon the judgments rendered by Hon'ble the Apex Court in cases ***Kalyan Singh v. Smt. Chhoti 1990(1) SCC 266, Government of A.P. and Others v. Karri Chinna Venkata Reddy and Others 1994 AIR (SC) 591, Smt. J. Yashoda v. Smt. K. Shobha Rani 2007(2) RCR (Civil) 840*** and ***U. Sree v. U Srinivas 2013(2) SCC 114***.

Having considered the submissions made by learned counsel for the petitioner and perusal of the record of the case file, this Court is of the considered view that for deciding any application for permission to lead secondary evidence, the Court is to primarily satisfy itself that there was destruction or loss of documents for which secondary evidence is being sought.

In the present case, application was filed on the ground that on 30.9.2015, while applicant was returning from his showroom at Sector 17 Market, Chandigarh along with certain other original documents including agreement of sale dated 27.9.2009 fell down somewhere on the way and he could not locate the same. For this purpose, the matter was reported to the Police vide DDR No. 14 dated 2.10.2015 at Police Post Neelam, Sector 17, Chandigarh. The other

documents i.e. receipt dated 27.1.2011, Will dated 27.1.2011 and affidavit dated 27.7.2011 of Vinod Verma duly attested by the Executive Magistrate, Pachnkula are available with the applicant. On that account, applicant was unable to produce the original agreement of sale dated 27.7.2009 and for that purpose, permission was sought to treat the photocopy of the said agreement of sale as original and to prove the same by calling the witness. The Court below has rightly believed the contention of applicant that in fact there was loss of record and that is why, necessary permission to produce photocopy for leading secondary evidence to prove agreement of sale dated 27.7.2009 was allowed along with other relevant documents i.e. receipt, Will and affidavit which were in possession of the applicant. On those facts, present case is distinguishable from the facts of the judgments rendered by the Hon'ble Apex Court in cases ***Kalyan Singh v. Smt. Chhoti*** (*supra*), ***Government of A.P. and Others v. Karri Chinna Venkata Reddy and Others*** (*supra*), ***Smt. J. Yashoda v. Smt. K. Shobha Rani*** (*supra*) and ***U. Sree v. U Srinivas*** (*supra*).

More so, the Court below, in its order, has already made it clear that production of any document does not amount to prove of the same and the same would have stand the test of proof by evidence. That way, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

March 15, 2016

"DK"