

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

**CR No.1813 of 2013
Decided on: 21.03.2016**

Om Parkash

....Petitioner

Versus

Sanjeev Kumar

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Suryakant Gautam, Advocate
for the petitioner.

Mr. C.B. Goel, Advocate
for the respondent.

REKHA MITTAL J.

Challenge in the present petition has been directed against orders dated 15.10.2012 (Annexures P-8 and P-9) passed by the Civil Judge (Senior Division), Panipat, dismissing two applications Annexures P-4 dated 21.03.2011 and P-5 dated 02.05.2011 to grant permission for producing certified copies of the sale deeds by way of secondary evidence to prove identity of the suit property.

Counsel for the petitioner would contend that the petitioner/plaintiff has filed a suit for permanent injunction against the defendant with a plea that he purchased the suit property having four plots vide sale deed No.1507 dated 09.08.1974 and he is owner in possession of the suit property since then. After purchase of plots, the petitioner constructed a common boundary wall of all the plots and a shed on the south-west corner of the plot and also got electric

connection installed there. The respondent threatened to dispossess the plaintiff forcibly and illegally. In the written statement, the defendant/respondent denied possession of plaintiff over the suit property and also disputed identification of the property in question. The petitioner, to establish identity of property summoned Smt. Surjit Kaur wife of Balbir Singh, owner of adjoining property with original sale deed bearing Vasika No.4647 dated 12.11.1981 as Surjit Kaur's plot falls in Khasra No.4327 and a part of plot of the plaintiff also falls in Khasra No.4327. Smt. Surjit Kaur appeared as PW-5 on 16.12.2010 and stated on oath that she did not want to produce the sale deed in her favour. Sanjay Mittal, owner of another plot made a statement that original sale deed bearing No.3543 dated 16.10.1985 is in custody of Canara Bank, Panipat. Mohinder Kumar PW-9 failed to produce the sale deed No.5006 dated 03.12.1981 because he had already sold his plot in favour of Rajinder Kumar Sapra. It is further argued that the petitioner moved two applications (Annexures P-4 and P-5) for permitting to prove sale deeds No.4647 dated 12.11.1981 in favour of Surjit Kaur, sale deeds bearing Nos.5006 dated 03.12.1981, 3543 dated 16.10.1985, 3194 dated 12.08.1981 by way of secondary evidence but the same have been wrongly and illegally rejected by the trial Court vide orders impugned. It is further argued that a serious prejudice would be caused to the petitioner in case he is not permitted to prove the aforesaid sale deeds by way of secondary evidence, necessary for just decision of the case.

Counsel for the contesting respondents has supported the

impugned orders by contending that copies of the sale deeds sought to be proved by way of secondary evidence are not appended with the application in order to prove that the sale deeds in question are relevant and material for adjudication of the matter in dispute. It is further argued that the sale deed in favour of Smt. Surjit Kaur PW-5 pertains to Khasra No.4327 but it is not plea of the petitioner that property purchased by him falls in any khasra number much less the khasra number from which property was purchased by Smt. Surjit Kaur. It is further argued that the petitioner never complied with the provisions of Section 66 of the Evidence Act before filing applications for permission to lead secondary evidence. It has been argued that the petitioner has challenged two separate orders by way of a joint petition, not permissible in law.

I have heard counsel for the parties and perused the records.

Section 66 of the Indian Evidence Act (for short 'the Act') provides for rules as to notice to produce. Section 66 says that secondary evidence of the contents of the documents referred to in Section 65, Clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case. Proviso appended to Section 66 deals with certain contingencies where such notice shall not

be required or in case the Court thinks fit to dispense with such notice.

Counsel for the petitioner has not made any submissions *qua* requirements of Section 66 of the Act. Concededly, service of notice upon the party in possession or power of the document has not been dispensed with by the trial Court. As the petitioner has not complied with the provisions of Section 66 of the Act to prove the sale deeds by way of secondary evidence, application filed for adducing secondary evidence to prove the sale deeds except the one in favour of Smt. Surjit Kaur is not tenable. This apart, the petitioner along with the application for secondary evidence has not placed on record copies of sale deeds for consideration and appreciation by the Court as to how proving of these documents would be relevant and necessary for just decision of the case. Not only this, copies of these sale deeds have not been produced before this Court in order to examine and appreciate contention of the petitioner that a serious prejudice is likely to be caused to him in case he is not permitted to prove these documents by way of secondary evidence.

Smt. Surjit Kaur appeared in the witness-box and declined to produce the original sale deed in the Court. As per plea of the petitioner, land purchased by Smt. Surjit Kaur is part of Khasra No.4327. It is none of the plea of the petitioner that suit property measuring 1516 sq. yds. consisting of 4 plots allegedly purchased from Sh. Puran Chand is wholly or in part consists of Khasra No.4327. On the contrary, a plain reading of the plaint (Annexure P-1) would evident that there is no reference to any khasra number and reference has been

made to plot No.2 measuring 889 sq. yds. and plot No.12 to 14 each measuring 209 sq. yds. by describing it in letters ABCD shown Red in the site plan attached with the plaint. Counsel for the petitioner is not in a position to say if the sale deed in his favour refers to any khasra number or the site plan appended with the plaint refers thereto. In this view of the matter, the petitioner has failed to make out a case that in case he is not permitted to prove the sale deeds in question by way of secondary evidence, justice would be a casualty or he is likely to suffer irreparable loss or injury. In this view of the matter, I do not find any error much less illegality in the orders impugned.

For the reasons aforestated, the petition is dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(REKHA MITTAL)
JUDGE

21.03.2016
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