

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 2464 of 2016
Date of decision : April 6, 2016

Rajinder Singh alias Harjinder Singh and others

..... Petitioners

Versus

Sucha Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Chetan Bansal, Advocate
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioners-plaintiffs are aggrieved of the dismissal of the application to conduct an inquiry for loss of original postal receipt Ex. PW1/2 (Annexure P-2) bearing receipt No. 959 vide which legal notice dated 22.7.2005 alleged to have been sent by the plaintiffs to the defendant to perform his part of the agreement to sell in a suit for specific performance of the agreement to sell dated 7.3.2005 has been dismissed.

Learned counsel for the petitioners submits that already an application under Section 65 of the Indian Evidence Act, 1872 for leading secondary evidence has been filed which had been allowed but was subject to existence and loss. Along with the suit Fairst Dastavej was attached which contained the original documents

i.e. original agreement to sell, original postal receipt and original copy of the notice. The other documents i.e. original agreement to sell, original copy of the notice were on the file but original postal receipt was misplaced. In these circumstances, the application was moved but the finding arrived at by the trial court was that no original postal receipt was ever placed on record, would come in way in proving the same by secondary evidence.

I have heard learned counsel for the petitioners, appraised the paper book and also noticed the facts which have emanated during the pendency of the suit and of the view that certainly, in case the application under Section 65 of the Indian Evidence Act, 1872 has already been allowed, the finding viz-a-viz loss of original postal receipt would come in the way of the petitioners-plaintiffs, for, original agreement to sell and notice are already on record, which have been annexed as Fairst Dastavej (Annexure P-4) which contained the following three documents:-

1. Original Agreement
2. Original Postal Receipt
3. Sic- Copy of notice dated 22.7.05

However, only the original postal receipt is stated to be misplaced. It is in these circumstance, the application was filed for holding an enquiry. The trial court did not notice these facts. Once two other original documents are on record then there could have been occasion of misplacing of the original postal receipt. The trial court should have recorded the finding that it was placed on record or not, and for that should have held an enquiry and give finding as

to whether it was attached and was lost, only then the photocopy of the postal receipt can be looked into by way of secondary evidence.

Accordingly, the impugned order is set aside.

The matter is remanded back to the trial court with a direction to hold an enquiry viz-a-viz whether the original postal receipt was also part of the record and was also annexed with Fairst Dastavej and to further find out whether it was lost from the custody of the court or not so that it may not come as an impediment or hindrance to the petitioners-plaintiffs for proving loss and leading evidence by way of secondary evidence.

With the aforementioned directions, revision petition stands disposed of.

Copy of the order be given dasti under the signature of the Reader attached to the Bench.

(AMIT RAWAL)
JUDGE

April 6 , 2016
archana