

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

CR No.2367 of 2014 (O&M)

Date of decision : 11.04.2016

Jitender Kumar Sharma

...Petitioner

Versus

Vijay Kaushik and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Alok Kumar Jain, Advocate and
Mr. Mayank Aggarwal, Advocate and
Mr. Sandeep Saini, Advocate for the petitioner.

Mr. Pankaj Jain, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The petitioner-defendant No.2 is aggrieved of the impugned order, whereby application filed under Section 65 of the Indian Evidence Act to prove on record alleged agreement to sell dated 16.05.2005 by way of secondary evidence, has been allowed.

Mr. Chetan Mittal, Sr. Advocate assisted by Mr. Alok Kumar Jain, Advocate submits that impugned order does not confirm to the statutory requirement of law. Even otherwise, no foundation has been laid

enabling the Court to grant permission, for, leading secondary evidence as on appearance, application was moved for production of the original agreement to sell. However, in reply, it was stated that it will be produced as it was misplaced during the whitewash and thereafter in the application under Section 65, different tinge & colour qua the same, that it was lost two years back at the time of whitewash, therefore, there is inconsistency in respect of stand with regard to the availability of the agreement to sell. In support of his contention, he submits that second copy of the agreement to sell is sought to be placed but a photocopy of the same was placed which in law is not permissible. Photocopy has to be taken into consideration only when there are attenuating circumstances inasmuch as that one set of the original photocopy is summoned from the office as record but the Court below has, in blanket manner allowed the application without even giving liberty qua its existence and loss and, therefore, impugned order is not sustainable in law.

Mr. Pankaj Jain, learned counsel appearing on behalf of respondents-plaintiff submits that parameters for allowing the application for secondary evidence, there has to be a opportunity to the parties for proving the existence and loss. The agreement to sell was misplaced in whitewash which is a sufficient foundation and can be explained, if an opportunity is given for proving existence and loss, therefore, there is no illegality and perversity in the order and prays for affirmation of the same.

I have heard learned counsel for the parties and appraised the paper book and of the view that no doubt trial Court while taking into consideration the facts and circumstances of the case, allowed the

application for secondary evidence in a blanket manner instead of giving opportunity to the respondent-plaintiff to prove the existence and loss of the documents particularly the document being a photocopy and not the second copy.

Mr. Jain, in support of his contention, also relied upon judgment rendered by Hon'ble Supreme Court in *Rakesh Mohindra Vs. Anita Beri and others*, 2015 (4) RCR (Civil) 1023 to contend that photocopy of the documents is admissible.

I have gone through the same and of the view that at the time of the issue of letter of disclaimer, which was supported by original documents, Hon'ble Supreme Court granted the permission to the party to lead secondary evidence in respect of photocopy of the documents but in the instant case, it is yet to be proved that whether there are certain other circumstances or available documents or situations to lay foundation in respect of loss of original agreement to sell at the time of whitewash. All these factors would be proved in case the respondent-plaintiff is given chance to prove the existence and loss and thereafter petitioner-defendant would be at liberty to take all possible pleas vis-a-vis the admissibility of the photocopy of the documents.

With the aforementioned observations, impugned order under challenge is modified with the following directions to the trial Court.

1. The aforementioned secondary evidence would be subject to the existence and loss of the documents.
2. Parties to the lis shall be given 3-3 effective opportunities with regard to issue of existence and loss

and thereafter the petitioner-defendant shall have the right to put across the case vis-a-vis admissibility of the documents relying upon the statutory provision and as well as judgments including objection qua admissibility of the photocopy of the agreement to sell.

Impugned order is accordingly modified.

With the aforementioned observations, revision petition stands disposed of.

11.04.2016

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**(AMIT RAWAL)
JUDGE**