

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.2880 of 2015

Date of Decision:19.2.2016

Jaspal Singh

---Petitioner

vs.

Ram Gopal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Anil Kumar Garg, Advocate
for the petitioner

Mr. R.K.Singla, Advocate
for the respondent

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

Rekha Mittal, J.

The present petition lays challenge to order dated 22.1.2015 (Annexure P-7) passed by the trial Court allowing application of the respondent to prove 5th /last page of the agreement to sell dated 6.11.2013 by way of secondary evidence.

Counsel for the petitioner contends that the respondent/plaintiff filed a suit in December 2012 for symbolic possession by way of specific performance of the agreement to sell dated 7.3.2012 in

respect of a house, detailed in the head note of the plaint with further prayer of permanent injunction restraining the defendant/petitioner from alienating, mortgaging and creating charge over the suit property as well as interfering in his peaceful possession and dispossessing him forcibly and illegally. The petitioner, on receipt of notice of the suit had put in appearance before the trial court and filed an application (Annexure P-2) for production of original agreement to sell and to supply a copy thereof to the petitioner. The respondent filed reply to the application (Annexure P-3) wherein he has taken a very strange plea that he had brought the complete agreement in the Court on 6.11.2013 but when his counsel saw the agreement, he found that last page of the agreement was missing. The respondent tried his best to trace the last page of the original agreement but could not find it. He lodged DDR on 2.12.2013 regarding missing of 5th page of the agreement. It is further argued that the petitioner filed the written statement raising a categorical plea that he had taken a friendly loan of Rs. 25,000/- and the agreement to sell dated 7.3.2012 was executed as a security on the insistence of the respondent/plaintiff. The defendant returned the loan amount of Rs. 25,000/- alongwith interest and the said fact along with the fact that agreement stands cancelled was duly endorsed on the last page of the agreement to sell. It is argued with vehemence that the respondent made up a false story in regard to loss of 5th page of the agreement so that the facts pleaded in the written statement do not come on the surface. According to counsel, in the given circumstances of the case, the respondent is not entitled to prove 5th page of the agreement by way of secondary evidence.

Counsel for the respondent/plaintiff, on the other hand, has supported the impugned order with the submissions that photocopy of the complete agreement to sell consisting of five stamp papers was appended with the plaint and nothing was concealed from the Court. As 5th page of the agreement got lost on 6.11.2013 when the respondent brought it to the Court for producing the original in pursuance to an application filed by the petitioner, he lodged DDR dated 2.12.2013 in respect of loss thereof. It is further argued that the learned trial court has permitted the respondent to prove the 5th page of the agreement by way of secondary evidence subject to proof of loss and existence thereof, thus, the application falls within the purview of Section 65 CPC, and has been rightly allowed.

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

The story propounded by the respondent, in reply to an application for production of original agreement of sale in regard to loss of 5th page appears to be strange but it is difficult to conclude at this stage that the said fact is false or the 5th page of the agreement has been intentionally concealed by the respondent. Counsel for the petitioner is fair enough to concede that in the application for production of agreement, no such plea was raised by the petitioner that 5th page of the original agreement contains any such endorsement as has been sought to be pleaded in the written statement filed later.

Keeping in view the facts and circumstances of the present case, I do not find any error much less illegality in trial court's allowing 5th page of the agreement to be proved by way of secondary evidence. Accordingly, the petition is disposed of with the observations that at the

time of final disposal of the suit, the trial court would keep in mind the application filed by the petitioner for production of original agreement, reply thereto, lodging of DDR on 2.12.2013 in respect of alleged loss on 6.11.2013 and of course plea of the petitioner in the written statement, in the light of evidence on record.

(Rekha Mittal)
Judge

19.2.2016
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