

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 510 of 2014 (O&M)

Date of Decision: 25.04.2016

Mohinder Kaur

... Petitioner(s)

Versus

Baldev Singh 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. Sahil Soi, Advocate
for the petitioner(s).

Mr. Ramesh Sharma, Advocate
for respondents No.1 to 3.

Shekher Dhawan, J.

Present petition is challenge to the order dated 6.12.2013, passed by learned Additional Civil Judge (Senior Division), Nakodar, whereby application filed by defendant No.1/petitioner-Mohinder Kaur under Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act") for seeking permission to prove the memo of exchange of land dated 10.5.2005 executed between the plaintiffs and Amar

Singh, husband of defendant No.1, by way of secondary evidence was declined.

Learned counsel for the petitioner submitted that the Court below has completely ignored the fact that the document was lost and permission for leading secondary evidence was sought and the same has been denied by the Court below.

As per view taken by this court in ***Anupam Gupta v. Smt. Kulwant Gupta and Others (Civil Revision No. 2991 of 2012), decided on 9.3.2015***, there is no need to even file an application for reception of secondary evidence. Section 65 of the Act itself enacts a rule of procedure that secondary evidence could be adduced on any one of the grounds set out thereunder. If a person states that document is missing or lost or in the custody of the adversary or any other ground mentioned in the said Section, it must be taken that ground is made for reception of secondary evidence. Certainly, the other party is well within its rights to conduct cross-examination in effective manner so as to establish that no such circumstance so exist for production of secondary evidence or the document produced does not satisfy the definition of secondary evidence under Section 63 of the Act. Undisputedly a proof of document is different from document being tendered into evidence in the Court. It will be complete denial of justice if defendant No.1/petitioner is not allowed to produce the secondary evidence in such like cases. The Court below has completely ignored this fact while passing the order under challenge.

In view of above, present petition is hereby accepted and impugned order dated 6.12.2013 stands set aside and application filed by defendant No.1/petitioner is hereby accepted.

(Shekher Dhawan)
Judge

April 25, 2016
"DK"