

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

CR No.7351 of 2011(O&M)

Date of decision:28.11.2016

Ranjit Singh and another

....Petitioners

VERSUS

Tarlok Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.S. Dadwal, Advocate for the petitioners.

Mr. Rajeev Dev Sharma, Advocate for respondents.

REKHA MITTAL, J.

The present petition directs challenge against order dated 12.11.2011 (Annexure P-4) passed by the Civil Judge (Junior Division), Mukerian whereby application filed by the petitioners for leading secondary evidence regarding agreement dated 27.07.2004 (Annexure P-2) executed by respondent No.1 and petitioner No.1 has been dismissed.

Counsel for the petitioners has submitted that Tarlok Singh-respondent has filed a suit for permanent injunction restraining the defendants from raising any type of construction including walls etc. in the site shown in red colour with letters ABCD in the site plan appended with the plaint. Further prayer has been made for mandatory injunction directing the defendants to remove their newly constructed walls, bathroom and kitchen in the aforesaid site with prayer for possession of the site after removal of super-structure.

The petitioners/defendants filed the written statement raising a specific plea in para 3 of the preliminary objections that wife of plaintiff

moved an application before the village Panchayat and on 27.07.2004, Panchayat got affected compromise between the parties, plaintiff also signed the compromise and the Panchayat fixed 01.08.2004 for demarcation but the plaintiff filed the suit before arrival of the date fixed for demarcation.

The respondent/plaintiff filed replication and in response to para 3 of the preliminary objection, he has admitted that there was agreement dated 27.07.2004 for measurement and demarcation, though with the plea that the defendants did not agree with decision of the village Gram Panchayat for demarcation on 01.08.2004. It is argued that in view of pleadings of the parties, existence of agreement between the parties with signatures of petitioner No.1 and respondent No.1 becomes an undisputed position. It is further submitted that the petitioners examined HC Bhupinder Singh from Police Station Talwara and he deposed on 22.10.2011 that agreement dated 27.07.2004 has been destroyed. It is vehemently argued that as existence and loss of original document has been duly proved, the trial Court has committed a serious error in dismissing plea of the petitioners for proving the agreement by way of secondary evidence.

In addition, it is argued that the suit for injunction was instituted by the respondent/plaintiff in the year 2004, issues were framed on 07.02.2005 and the respondent closed his evidence on 01.08.2011 and thereafter 12.08.2011 was the first date fixed for the evidence of the petitioners. The petitioners examined the aforesaid witness on 22.10.2011 and on the same day, the instant application was filed seeking permission to lead secondary evidence. It is argued that in view of the above, delay in conclusion of proceedings cannot be attributed to the petitioners in order to

deny them the right to prove their defence in accordance with law. So far as the document in question being a photocopy, it is argued that in case the petitioners are permitted to adduce secondary evidence they would lead evidence to prove accuracy of the photostat copy and the evidentiary value to be attached to the document would be open for determination by the trial Court. In support of his contention, he has referred to judgment of this Court **Surinder Kaur Vs. Mehal Singh and others, 2014(1) RCR (Civil) 467.**

Counsel for the contesting respondent has supported the impugned order with the submission that statement of HC Bhupinder Singh is not at all sufficient to prove loss of original document as it is none of the plea of the petitioners in the written statement that compromise was affected with the intervention of the police much less the original compromise deed was given to the police for safe custody. It is further submitted that the petitioners have not examined any witness of the Panchayat to establish that the original document dated 27.07.2004 has been lost justifying their plea to prove the same by way of secondary evidence.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

The trial Court in the first part of the impugned order has taken note that the case is at the stage of conclusion and two last opportunities have been granted to the defendants to conclude evidence. It has further been noticed that the case falls within the list of "samadhan cases" and the defendants have taken many opportunities to conclude evidence including last opportunity. Counsel for the respondent/plaintiff has not disputed the factual assertion of the petitioners that the case for the

first time was fixed on 12.08.2011 for adducing evidence of the petitioners/defendants. He has also not disputed that the case remained pending for over six years for adducing evidence by the respondent/plaintiff and evidence of the respondent/plaintiff was concluded on 01.08.2011. It appears that since by the time evidence was closed by respondent/plaintiff, the case had already become old having been filed 7 years ago and was included in the list of "samadhan cases" to be disposed of within a particular period, the trial Court tried to accuse the defendants for having failed to adduce evidence within the stipulated period but without appreciating that evidence of the defendants/petitioners started only in August, 2011.

A copy of the agreement dated 27.07.2004 has already been marked during evidence. The plaintiff has admitted existence of the agreement. It is none of the plea of the plaintiff in reply to the application for secondary evidence that copy of the agreement marked on record is not the true copy much less having been tampered with by the petitioners/defendants. This apart, it is for the trial Court to appreciate at an appropriate stage of the proceedings as to what evidentiary value can be attached to photocopy even if it is proved to be correct copy and the original having been lost. However, as the petitioners have failed to satisfy as to how the original document could happen to be in custody of the police, statement of HC Bhupinder Singh may not be sufficient to prove that the original document has been lost. Nevertheless, the petitioners can be permitted to prove the document by way of secondary evidence subject to proof of its loss. In this view of the matter, I find merit in contention of the petitioners that they are entitled to prove the agreement dated 27.07.2004 by way of secondary evidence subject, however, to the

condition that photocopy was prepared from or compared with the original and the original document has been lost.

For the foregoing reasons, the petition is allowed, the impugned order is set aside, application filed by the petitioners for proving the agreement dated 27.07.2004 by way of secondary evidence is allowed in the aforesaid terms.

NOVEMBER 28, 2016		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no