

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

CR No.8419 of 2015

Decided on: 23.07.2016

Suresh Chand Sharma

....Petitioner

Versus

Kuldip and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Amit Jain, Advocate
for the petitioner.

Mr. Adarsh Jain, Advocate
for respondents No.1 and 2.

- 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?*

REKHA MITTAL, J.

The present petition lays challenge to order dated 02.11.2015 passed by the Civil Judge (Jr. Division), Palwal whereby the application filed by the petitioner/defendant No.1 has been disposed of.

A brief backdrop of this case is that Kuldip and Anuj Kumar sons of Ram Kishan Dass have filed a suit for declaration and permanent injunction that they are owners in possession of residential house detailed in para 1 of the plaint which they agreed to sell to defendant No.1 (petitioner herein) for a sale consideration of Rs.65,00,000/- and an agreement dated 12.08.2006 was executed whereby an amount of Rs.6,50,000/- was paid towards earnest money and a separate receipt *qua* said payment was also prepared on that day.

The remaining sale consideration was agreed to be paid at the time of

execution and registration of the sale deed. It has further been pleaded that at the time of registration of the sale deed, only an amount of Rs.2,90,000/- was paid to the plaintiffs and therefore, the sale deed dated 09.10.2006 bearing Vasika No.6767 executed by the plaintiffs in favour of defendant No.1 is illegal, null and void and not binding upon rights of the plaintiffs.

An application was filed by the plaintiffs for permission to lead secondary evidence whereby defendant No.1 was called upon to produce original agreement to sell and receipt dated 12.08.2006 and the original sale deed document No.6767 dated 09.10.2006. After seeking reply filed by the contesting party and having heard counsel for the parties, the application was dismissed by the trial Court vide order dated 04.03.2014 that became subject-matter of Civil Revision No.2183 of 2014 decided by this Court on 28.07.2015.

The petitioner, by relying upon the order passed by this Court in the aforesaid revision petition raised an issue that the respondents/plaintiffs cannot be allowed to lead secondary evidence of any other document except the sale deed. The said application after filing of reply by the respondents/plaintiffs and in view of rival submissions made by counsel for the parties was disposed of by the trial Court vide order impugned in the present petition.

Counsel for the petitioner has argued with vehemence that in view of the limited notice of motion order reproduced in para 3 of the grounds of revision and the order (Annexure P-5) finally disposing of CR No.2183 of 2014 on 28.07.2015, there remains no doubt that the

respondents/plaintiffs were permitted to prove the sale deed only by way of secondary evidence, therefore, the trial Court has committed a serious error rather illegality by wrongly interpreting the order passed by this Court in favour of respondents/plaintiffs and permitting them to prove all the documents by way of secondary evidence in regard whereof their claim as such was declined vide order dated 04.03.2014 passed by the trial Court and challenged in CR No.2183 of 2014.

Counsel for the contesting respondents/plaintiffs, on the contrary, would urge that as the plaintiffs filed the application for permission to lead secondary evidence in regard to documents viz. agreement to sell and receipt dated 12.08.2006 and sale deed No.6767 dated 09.10.2006 by way of secondary evidence and the order dated 04.03.2014 passed by the trial Court dismissing their prayer was set-aside and the revision petition was allowed, the trial Court has rightly rejected application of the petitioner by holding that the respondents/plaintiffs are entitled to prove all the documents by way of secondary evidence in regard whereof permission was sought by way of application that was dismissed by the trial Court on 04.03.2014.

I have heard counsel for the parties, perused the paperbook particularly the order of notice of motion and the final order passed in CR No.2183 of 2014.

Concededly, the respondents/plaintiffs filed the application for secondary evidence in regard to three documents namely agreement of sale, receipt dated 12.08.2006 and sale deed dated 09.10.2006. By filing CR No.2183 of 2014, the respondents/plaintiffs challenged the

order dated 04.03.2014 passed by the trial Court rejecting their application (Annexure P-2).

To decide, what has been allowed by order passed in the aforesaid civil revision, it is relevant to extract the order of notice of motion dated 24.03.2014 and the final order dated 28.07.2015 respectively.

(i) *“There is an admission in reply to the application for production of secondary evidence by the defendants that the sale deed 19.10.2006 was executed by the plaintiff and that sale deed is produced by the defendants in another proceeding as the plaintiff and his brothers have involved the defendants/vendees in various litigation/suits being in collusion with each other (P/3, page 19 of the paper book). However, the existence of agreement dated 12.08.2006 is denied being in possession of defendant No.1. This response was to the assertion of the plaintiff that the agreement to sell was in exclusive possession of defendant No.1 and not defendants No.2 and 3. When the existence of the documents, on which the fate of the case depends, is admitted by the defendants, then there appears to be no question of leading secondary evidence since the existence of the primary evidence is not denied. The reply was filed on 17.9.2011. It appears that proper course to be adopted was to have called upon the defendants to disclose the proceedings where the original sale deed was on record. The plaintiff did not resort to this remedy by making an appropriate request before the trial Court. However, in order not to waste further time of the trial Court and delay the proceedings, this Court would exercise jurisdiction to interfere in this matter limited to defendant No.1 disclosing source of litigation where the sale deed dated 19.10.2006 may lie in original. Notice of motion to respondent No.1 alone at this stage for*

9.4.2014.”

(ii) *“1. Any document which is sought to be challenged ought to have been received since the document (sale deed) is relied on by the defendant who is an adversary. That itself affords a ground for receiving the document that qualifies as secondary evidence.*

2. The impugned order is set-aside and the revision petition is allowed.”

A plain and careful reading of the order of notice of motion would make it manifest that this Court decided to interfere in the matter limited to defendant No.1 disclosing source of litigation where the sale deed dated 09.10.2006 may lie in original. While disposing of the petition on 28.07.2015, in para 1 of the order, there is reference to the sale deed at two places while referring to 'any document' as well as the document. Though in para 2, it has been held that the impugned order is set-aside and the revision petition is allowed but a conjoint reading of notice of motion as well as order dated 28.07.2015 leaves no manner of doubt that the respondents/plaintiffs were allowed to prove the sale deed only by way of secondary evidence. In other words, they were not permitted to prove the agreement to sale and receipt dated 12.08.2006 by way of secondary evidence. As the order passed by this Court has attained finality, the trial Court has committed a serious error by holding that the respondents/plaintiffs are entitled to adduce secondary evidence in regard to all the documents, subject-matter of the application (Annexure P-2) rejected by the trial Court vide order dated 04.03.2014.

In view of what has been discussed hereinabove, the petition is allowed and the application filed by the petitioner that the

respondents/plaintiffs shall not be entitled to lead secondary evidence *qua* any other document except the sale deed is allowed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

23.07.2016
yakub

(REKHA MITTAL)
JUDGE