

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

CR No. 4384 of 2017

Date of Decision: 14.07.2017

SUSHIL KUMAR SINGLA

-PETITIONER

VS

BHAGWAN SINGH SANDHU

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunny K. Singla, Advocate,
for the petitioner.

Mr. D.S. Malwai, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner-plaintiff filed a suit for specific performance in respect of agreement to sell dated 16.02.2011. The said suit is pending. In the written statement filed by the defendant, the execution of agreement was denied and it was claimed that the same is forged and fabricated. Reliance was placed on a deed of dissolution of firm dated 15.11.2008.

Plaintiff led his evidence by examining five of the plaintiff witnesses. Thereafter, an application was filed for production of original deed of dissolution by the plaintiff and the said application was disposed of on the basis of statement made by the defendant that the deed is in possession of his

father. Thereafter, plaintiff summoned father of the defendant who appeared in the Court and made a statement on 09.08.2016 that the deed of dissolution has been mis-placed.

After closure of evidence of plaintiff, defendant started leading his evidence. During pendency of his evidence, he moved an application under Section 65 of the Evidence Act for production of dissolution deed by leading secondary evidence in respect of dissolution deed.

Trial Court allowed the production of dissolution deed in the form of photostat copy of the same vide order dated 19.01.2017 and the same was got exhibited by the defendant on 30.01.2017 and closed the evidence. The said deed of dissolution was notarized on 10.02.2016 by an Advocate.

As per attestation of the Executive Magistrate, the same was done on 17.11.2008. Application filed by the plaintiff for additional evidence has been declined.

Learned counsel for the petitioner submitted that as per the notarized document, needful was done only after seeing the original document and it presupposes the existence of document for which no secondary evidence could have been led by the defendant.

Learned counsel for the respondent vehemently opposed the case of the petitioner on the ground that earlier the

plaintiff filed a civil suit for declaration qua this very deed of dissolution on 04.08.2010 and the said suit was withdrawn on 20.04.2011. No permission to file suit on the same cause of action was sought by the plaintiff and therefore, filing of subsequent suit is barred in terms of Order 2 Rule 2 CPC.

Having heard the submissions made by learned counsel for the parties, I am of the view that the fact of withdrawal of the earlier civil suit on 20.04.2011 would be gone into by the trial Court at the relevant stage. The cause of action accrued to the plaintiff-petitioner only after acceptance of application under Section 65 of the Evidence Act in which photocopy of deed of dissolution was sought to be adduced in evidence by means of secondary evidence.

Necessary endorsement made by the Notary on the document with reference to the register maintained in due course of business would be relevant to be appreciated by the trial Court for which right of the plaintiff for leading additional evidence cannot be curtailed.

The attestation by the Executive Magistrate whether would provide a cause for refuting the admissibility of photocopy of the original document would also be gone into by the trial Court at the relevant stage.

In view of aforesaid, I am of the view that this revision

petition deserves to be allowed. Plaintiff-petitioner is entitled to lead additional evidence. The admissibility of evidence would be seen by the trial Court at the relevant stage.

In view of above, this revision petition is allowed.

14.07.2017
Jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No