

In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 5861 of 2017

Date of Decision: 31.08.2017

Roshan Lal Kamboj

---Petitioner

vs.

Gurnam Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Virender Kumar, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 8.8.2017 (Annexure P-7) passed by the Civil Judge (Junior Division), Karnal whereby application filed by the petitioner seeking permission to prove agreements to sell dated 18.3.2005 and 18.4.2005 by way of secondary evidence has been dismissed.

Counsel for the petitioner would contend that the petitioner and his father Baru Ram entered into an agreement to sell agricultural land measuring 42 bighas 13 biswas (including nehri land measuring 1 bigha 7 biswas) with respondent No. 5 for sale consideration of Rs. 74 Lakhs vide agreement to sell dated 18.3.2005 and received Rs. 14,00,000/- as earnest

money. Respondent-defendant No. 5 sold away the said land to respondent Nos. 1 to 4 and agreement to sell was executed by the petitioner and his father on 18.4.2005 for Rs. 76,50,000/- and rate of land is mentioned at Rs. 8,89,000/- per killa. As per the aforesaid agreements, petitioner and his father executed sale deed No. 4559/1 dated 21.6.2005 and entire sale consideration was received.

The petitioner and his father agreed with respondent No. 1 to 4 to cultivate their remaining land measuring 3 bighas 1 biswa on yearly theka basis at the rate of Rs. 11,000/- per year. Respondent Nos. 1 to 4 started cultivating the remaining agriculture land on theka basis and paid theka annually upto April 2014. In April 2015, when the petitioner approached respondent Nos. 1 to 4 to increase the amount of theka and make the payment, he was astonished to know from respondent No. 1 that they are owner of agriculture land measuring 3 bighas 1 biswa, detailed in para 2 of the plaint. It is further submitted that the instant suit has been filed by the petitioner to challenge sale deed No. 4558/1 dated 21.6.2005 obtained by respondent Nos. 1 to 4 from his father on which signatures of the petitioner were also obtained. It is argued that in sale deed No. 4558/1 dated 21.6.2005, sale consideration is shown to be Rs. 1,50,000/- for 3 bighas and 1 biswa agriculture land while it was specifically mentioned in the agreement to sell dated 18.4.2005 that rate of agricultural land is Rs. 8,89,000/- per killa. It is argued with vehemence that proving of the aforesaid agreements is necessary in order to establish plea of the petitioner that sale deed No. 4558/1 is the result of fraud because the petitioner or his father would not have agreed to sell land measuring 3 bighas 1 biswa for a

sale consideration of Rs. 1,50,000/-. It is further argued that the trial court committed a serious error rather illegality by dismissing the application.

I have heard counsel for the petitioner, perused the paper book particularly the various annexures appended with the petition including the order impugned.

The petitioner filed application to prove the aforesaid agreements by way of secondary evidence on the plea that he is in possession of photocopies of the agreements but original agreements may be in possession of the defendants out of which defendant No. 5 has been proceeded against ex parte. Another plea raised by the petitioner is that the original agreements cannot be produced as the same have been lost or destroyed by the defendants against whom these documents are to be proved.

Respondent No. 1 to 4 filed reply to the application (Annexure P-6) contesting claim of the petitioner/applicant. After having heard counsel for the parties in the light of their pleadings, the trial court rejected claim of the petitioner by taking into consideration the provisions of Section 65 of the Indian Evidence Act, 1872 (in short "the Act").

As per clause (a) of Section 65 of the Act, secondary evidence of a document can be allowed when the original is shown or appears to be in the possession or power of any person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court. The petitioner has averred that the original agreement may be in possession of the defendants out of whom defendant No. 5 is ex parte. Another plea raised by him is that the same might have been lost or

destroyed by the defendants. As per case set up in the plaint, agreement dated 18.3.2005 was executed by the petitioner and his father in favour of defendant No. 5 who has been proceeded against ex parte. No notice under Section 66 of the Act has been issued to defendant No.5 to produce agreement dated 18.3.2005. Counsel has failed to point out any clause(s) of Section 65 of the Act under which the petitioner can cover his case for leading secondary evidence. In this view of the matter, no error much less illegality can be noticed in the order impugned warranting intervention.

This apart, as per case of the petitioner, land measuring 42 bighas 13 biswas was sold vide sale deed No. 4559/1 dated 21.6.2005 on the basis of agreements to sell dated 18.3.2005 and 18.4.2005. Respondent Nos. 1 to 4 in para 2 of the reply by raising preliminary objection has admitted that sale deed bearing No. 4559/1 was executed and registered by Baru Ram son of Hetu Ram and Roshan Lal son of Baru Ram in favour of Gurnam Singh son of Sucha Singh defendant No. 1 for a sale consideration of Rs. 76,50,000/-and received the total amount but as the collector rate at the time of execution and registration of the sale deed was less, as such, the consideration in the sale deed has been shown as Rs. 53,57,000/- in order to save the stamp duty. This admission by respondent Nos. 1 to 4 is sufficient to prove the rate at which the land subject matter of sale deed No.4559/1 was sold by the petitioner and his father. On a query by the Court, counsel for the petitioner would inform that in view of averments raised in para 2 of the reply, price of land already sold vide sale deed No. 4559/1 would exactly match with the rate settled vide agreement to sell dated 18.4.2005. As per the settled position in law, there cannot be any better evidence than

admission of a fact by the contesting party. Since respondent Nos. 1 to 4 have admitted the actual sale consideration paid to the vendor(s) by the vendees, there is no question of the petitioner suffering any loss or injury in case he is not permitted to prove the agreements by way of secondary evidence.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

31.08.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No