

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.6406 of 2016
Date of decision:22.2.2017**

Nirmal Singh

...Petitioner

Versus

Smt.Shakuntala Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.A.K.Gupta, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition, at the hands of plaintiff-petitioner, filed under Article 227 of the Constitution of India, is directed against the order dated 29.7.2016 passed by the learned trial Court, whereby application of the petitioner was dismissed, declining his request for leading secondary evidence.

Heard learned counsel for the petitioner.

It is a matter of record that petitioner-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 5.12.2011 with consequential relief of permanent injunction. During the pendency of his suit, petitioner filed an application before the learned trial Court for permission to lead secondary evidence. Plaintiff-petitioner wanted to prove his affidavit dated 2.4.2012, by way of secondary evidence that on that date he was present in the office of Sub-Registrar. Copy of the affidavit dated 2.4.2012 was enclosed with the plaint. However, at the time of filing the suit, plaintiff-petitioner did not mention in his plaint that the original affidavit dated 2.4.2012 was not in his possession. Even in his application (Annexure P-2), seeking permission to lead additional evidence,

he made a half-hearted effort to disclose about the original affidavit dated 2.4.2012. In fact, the stand taken by the petitioner in his paras 2 and 3 of his application (Annexure P-2) is self contradictory. In para 2, he stated that affidavit dated 2.4.2012 was misplaced or stolen by the defendant and the officials of Sub-Registrar told the plaintiff that the affidavit has been misplaced. He further stated in para 2 of his application that plaintiff again executed another affidavit, which was attested by the Sub-Registrar-Executing Magistrate. However, in para 3 of the application (Annexure P-2), plaintiff has stated that affidavit dated 2.4.2012 and other documents were handed over by him to his counsel at the time of filing of the suit, but the affidavit dated 2.4.2012 was misplaced. It means that there were two affidavits of the same date and original of none of them was available but the plaintiff is conveniently silent in this regard in his plaint (Annexure P-4).

In view of what has been discussed hereinabove, it becomes crystal clear that plaintiff-petitioner has been trying to change his stand from time to time, as per his suitability. Having said that, this Court feels no hesitation to conclude that the learned court below committed no error of law, while passing the impugned order and the same deserves to be upheld.

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Smt. J.Yashoda Vs. Smt. K.Shobha Rani, 2007 (5) SCC 730** and judgment of this Court in **Ran Singh Vs. Balbir Sharma, 2016 (1) PLR 394**.

Coming to the judgments relied upon by the learned counsel for the petitioner in **P.K.Gupta Vs. Varinder sharma, 2002 (3) RCR (Civil)**

185 and Ashok Kumar Sachdeva Vs. Harish Malik, 2007 (4) RCR (Civil) 311, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

As noticed hereinabove, plaintiff-petitioner has failed to prove the existence of original affidavit dated 2.4.2012, which he wants to prove with the help of photostat copy thereof by leading secondary evidence. It is the settled principle of law that secondary evidence, as a general rule, is admissible only in the absence of primary evidence and that too when the litigant, seeking to lead secondary evidence, proves the existence and loss of original document, by giving reasonable explanations. However, in the instant case, petitioner miserably failed in this regard, while frequently changing his stand, thereby contradicting himself. Under these circumstances, it can be safely concluded that the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

In the fact situation of the instant case, it seems that petitioner-plaintiff was trying to play smart. However, while doing so, he was caught

at the wrong foot. Petitioner has failed to comply with the provisions of law contained in Section 65 of the Indian Evidence Act because of which he was rightly not found entitled for leading secondary evidence. The impugned order passed by the learned trial Court deserves to be upheld for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the instant civil revision petition stands dismissed, however, with no order as to costs.

22.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No