

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

CR No.6677 of 2016
Date of decision : 26.09.2017

Punam Devi

...Petitioner

Versus

Amarjit Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Manish Kumar Singla, Advocate for the petitioner.

Mr. K.B. Raheja, Advocate for the respondent No.1.

ANIL KSHETARPAL, J.

Defendant No.2 is in revision petition against the order dated 26.08.2016 passed by the Additional Civil Judge (Senior Division), Malerkotla, permitting the plaintiff to prove the photocopy of the agreement to sell dated 25.10.2010 by way of secondary evidence subject to the proof of existence of the document.

Plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 25.10.2010 executed by the defendant No.1 in favour of the plaintiff. Plaintiff in his plaint had submitted that the agreement to sell is in possession of the defendant No.1.

During the course of evidence, plaintiff filed an application for permission to prove the photocopy of the agreement to sell dated 25.10.2010 as the defendant No.1 denies that the agreement to sell is in her

possession.

In reply to the application, the defendant No.1 did not dispute the existence of the agreement to sell dated 25.10.2010. She, however, claimed that the aforesaid agreement to sell was cancelled and was destroyed by the parties. Taking into consideration these facts, the learned trial Court allowed the application referred to above.

I have heard the learned counsel for the parties at length and with their able assistance gone through the record of the case.

Learned counsel for the petitioner-defendant No.2 has submitted that the aforesaid agreement to sell is under-stamped and, therefore, not admissible in evidence. He submits that the agreement to sell can be executed only on a stamp paper worth ₹2000/- w.e.f. 20.07.2009 whereas in the present case, the photocopy of the agreement to sell shows that the document has been executed on a stamp paper worth ₹500/-. He submits that therefore the document is inadmissible in evidence.

I have considered the submission. However, I do not find any substance in the same. The case is at the stage of evidence of the plaintiff. The plaintiff has only been permitted to lead secondary evidence subject to the proof of the existence of the document. The execution of the agreement to sell is admitted by the defendant No.1. In these circumstances, at this stage, the argument of the learned counsel for the petitioner-defendant No.2 cannot be accepted that the document is under-stamped and, therefore, not admissible in evidence. Whenever the document is produced in evidence, the petitioner shall be entitled to take the objection.

Learned counsel for the petitioner has relied upon the judgment

of the Hon'ble Supreme Court of India reported in *1971(1) SCC 545* titled as *Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao and others*, to contend that the application for secondary evidence itself is required to be dismissed on the ground that the document is not properly stamped.

I have gone through the judgment passed by the Hon'ble Supreme Court of India.

In this case, the document in question was allowed to be produced. However, at the stage of the decision of the main case, the Court held that the document which is not properly stamped cannot be read into evidence.

Hence, the aforesaid judgment is distinguishable.

In view of the discussion made above, I do not find any good ground to interfere with the order dated 26.08.2016 passed by the Additional Civil Judge (Senior Division), Malerkotla.

Revision petition is dismissed.

26.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No