

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CR No.7538 of 2016
Date of decision: 06.10.2017

Joga Singh

..... Petitioner

Versus

Amarjit Singh Sidhu and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Vikas Singh, Advocate
for respondents No.1 to 3.

Mr. G.N. Malik, Advocate
for respondent No.6.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in revision petition against the order allowing the application for permission to lead secondary evidence vide order dated 13.10.2016.

Learned counsel for the petitioner has very vehemently argued that while noticing the facts, the Court has committed an error as the suit was not for specific performance but was only for recovery of the amount. He has further submitted that the Court has wrongly noticed that payment of ₹ 26 lacs is admitted which is a disputed fact.

Be that as it may. In the present case, the application for permission to lead secondary evidence has been allowed with respect to agreement to sell dated 01.01.2006 and subsequent receipts. The agreement to sell dated 01.01.2006 was not a stand alone agreement. There were series

of agreements between the parties. Some agreements have been produced in original whereas with respect to one application for permission to lead secondary evidence was moved which has been allowed. The agreement dated 15.05.2008 which has been produced in original makes a reference to agreement dated 01.01.2006.

In the present case, the trial Court has exercised the discretion in allowing the plaintiff to produce secondary evidence. However, the learned Court has committed an error. The application for secondary evidence can only be allowed subject to the proof of existence and loss of document. Hence, the order in question is modified. The application for secondary evidence shall stand allowed, however, subject to proof of existence of the agreement and loss thereof.

Revision petition is allowed.

06.10.2017

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No