

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

**CR No.7867 of 2017(O&M)
Date of Decision: 13.11.2017**

Gulzar Singh and othersPetitioners

Versus

Malkiat Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Parminder Singh Rai, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have made challenge to the order dated 20.09.2017 passed by Civil Judge (Junior Division), Dasuya, whereby application for permission to lead secondary evidence was allowed and the plaintiffs were allowed to prove the documents by way of secondary evidence subject to proof of existence and loss of the original documents.

[2]. As per facts on record, both the parties have purchased the land vide common sale deed dated 21.06.1977. Plaintiffs purchased 6 kanals, 2 marlas of land and defendants purchased 4 kanals of land out of total 10 kanals, 2 marlas of land vide the aforesaid common sale deed. According to the case set up by the plaintiffs in the application for secondary evidence, the original sale deed was given to Halqa Patwari for sanctioning the mutation in favour of the plaintiffs and defendants to the extent of their shares in the sale deed. Halqa Patwari did not

return the same and the same has been lost by him.

[3]. Since the land was purchased by common sale deed, therefore the existence of document perhaps cannot be denied by the defendants. Even as per findings recorded by the trial Court in the impugned order, the execution of sale deed dated 21.06.1977 has not been denied by the defendants. During course of arguments before the trial Court, learned counsel for the defendants has submitted that though the defendants are the beneficiaries of the sale deed and are in possession of the land, but the sale deed is not traceable at their instance.

[4]. The proceedings in terms of Section 65 of the Evidence Act are only like an inquiry. Mere exhibition of a document does not dispense with the proof of its execution. If a document is exhibited with an objection by the opposite side, the admissibility, relevancy and validity of the document would be gone into by the trial Court at a later stage. The alleged manipulation of the document on the basis of admission of the parties with regard to execution of sale deed dated 21.06.1977 would be subject to evidence to be led by the parties and appreciation done by the Court at a later stage. At this juncture, it cannot be said that the prayer allowed by the trial Court for production of photocopy of the sale deed would not advance the

cause of the plaintiffs in any manner.

[5]. If the document is objected to during trial, the practice of holding up the trial on such objection at the time of tendering of documents in evidence would be an '*archaic practice*' as held by the Hon'ble Apex Court in **Bipin Shantilal Panchal Vs. State of Gujarat, 2001(1) RCR (Criminal) 859.** The leading of evidence at the stage pursuant to passing of the impugned order would not crystallize any substantial right in favour of the defendants, rather the evidence led by the parties would be tested at the threshold of admissibility, validity and genuineness of the document in terms of execution and its nature. Later stage would be an appropriate stage for lawful consideration of such a criteria i.e. validity, admissibility and genuineness of the documents. Though there is no provision in law for de-exhibiting the document already exhibited in evidence, but the exhibition of a document, if objected to has to be answered in terms of its admissibility at a later stage. The offer of secondary evidence can best be impeached in cross examination of the witness. It will be for the Court to examine and decide as to whether it will be appropriate to rely upon such secondary evidence or not for want of compliance of Section 65 of the Evidence Act. In case, Court finds the secondary evidence is not reliable, the Court is at liberty to eschew the same. However, the attempt of a party

for production and to exhibit the document in this form of inquiry cannot be thrown at this threshold. The view expressed in **Dr. S.P. Arora Vs. Satbir Singh, 2010(5) RCR (Civil) 350** and **Simar Pal Singh Vs. Hakam Singh, 2009(14) RCR (Civil) 273** can be relied in this context.

[6]. The Court has to see the admissibility of the document. Mere denial by the party to produce original document in whose possession the same is stated to be does not lay down fundamental facts for producing secondary evidence. Even in the case of falling under the ambit of Section 65(c) of the Evidence Act, the Court has to see admissibility of such evidence where it is lost or destroyed by the party in whose favour it created an enforceable right.

[7]. At this stage, only an inquiry in terms of Section 65 of the Evidence Act is pending. The facts can be established at a later stage when the Court will apply its mind on the evidence. Photocopy of the document may or may not come in the definition of secondary evidence as contained in Section 63 of the Evidence Act. The admissibility of such document would be gone into by the trial Court at the relevant stage. The probative value of such document would be independently assessed by the Court on defined parameters in accordance with law.

[8]. In view of facts and circumstances of the case,

particularly in view of the fact that the sale deed dated 21.06.1977 is an admitted fact between the parties because both the parties derived their title from the same sale deed, therefore, the view expressed in **Mukesh Kumar @ Motta Vs. State of Haryana, 2011(1) RCR (Civil) 675** is not applicable.

[9]. For the reasons recorded hereinabove, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

13.11.2017

prince

Whether Reasoned/Speaking

Whether Reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No