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

CR No. 140 of 2017

Date of Decision: 13.07.2018

Jai Pal and another

....Petitioners

Vs

Anoop Singh and another

.....Respondents

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

Present: Mr. M.S. Jandiala, Advocate, for
Mr. Harish Bhardwaj, Advocate,
for the petitioners.

Mr. Ankur Malik, Advocate,
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioners have assailed the order dated 17.10.2016 passed by Civil Judge (Senior Division), Gohana vide which application for seeking permission to lead secondary evidence was declined.

2. Permission to lead secondary evidence was sought on the basis of family settlement dated 15.08.2010 which was reduced into writing and the same was lost somewhere. Photocopy of the said family settlement was sought to be produced by way of secondary evidence in the suit.

3. The application was contested. The trial Court vide

the impugned order dismissed the application on the ground that non-production of original has not been accounted for. Neither, it was asserted that where the original was available nor loss of the document was asserted in specific manner with reference to time and place.

4. I have considered the statement made by learned counsel for both the parties.

5. Party should be granted leave to lead secondary evidence. Whether the party seeking leave of the Court to lead secondary evidence ultimately succeeds in proving the document or not is a question of fact and the same depends upon evidence. To grant leave to lead secondary evidence does not mean that the document is admitted in evidence nor it is a finding of existence of any of the conditions indicated in Section 65 of the Evidence Act. It only amounts to holding an inquiry regarding existence of document or its loss under some circumstances. Failure or success to prove existence of a document or its loss cannot be pre-determined that too without providing opportunity to prove the same. Whether it is proved or not, is to be seen after the leave is granted and the evidence is produced and is evaluated by the Court. Mere execution of a document in evidence does not dispense with proof of its existence nor the same amount to proof of document. A proof of

document is different from a document being tendered in evidence during trial of the suit.

6. Reference can be made to **Ashok Kumar Sachdeva vs Harish Malik, 2007(4) RCR (Civil) 311**. The Hon'ble Apex Court in **Bipin Shantilal Panchal vs State of Gujarat, 2001(1) RCR (Crl.) 859** held that the procedure has been set for receiving the documents when the same is objected to during trial. The Court has castigated holding up trial of objections at the time of tendering document in evidence.

7. At that stage, asking the Court to pass an appropriate order on the objections has been categorized as an “archaic practice”. The offer of secondary evidence can be at best impeached in cross-examination. 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 Act. In case, the Court finds that secondary evidence is not worth reliance, in such eventuality, the Court shall eschew the same at a later stage.

8. 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 the aforesaid context.

9. The contention of both the parties would be

adequately answered at the time of consideration of issue by the Court on merits.

10. For the reasons recorded hereinabove, I find that the impugned order is not legally sustainable. The impugned order is set aside; revision petition is allowed in terms of observations made above.

11. Normal consequences to follow.

13.07.2018

Jyoti Yadav

**(RAJ MOHAN SINGH)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No