

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1748 of 2017 (O&M)
Date of Order:15.05.2018

Darshan Lal

..Petitioner

Versus

Gurmail Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.L.Verma, Advocate,
for the petitioner.

Mr. Sanjay Gupta, Advocate,
for respondents no.1 and 2.

ANIL KSHETARPAL, J(Oral)

Plaintiff-petitioner is in the revision petition against the order passed by the learned trial court dismissing an application for permission to lead secondary evidence so as to prove agreement to sell dated 21.12.2006.

Learned trial court has dismissed the application on the ground that a DDR through which the loss of document was reported to the police has not been produced. The court has further found that in the absence of any proof of loss of document secondary evidence cannot be allowed.

In the considered opinion of this Court, the order under challenge is erroneous.

Learned court has overlooked the fact that in the plaint the plaintiff had asserted agreement to sell which was not disputed in the written statement. In paragraph 2 of the plaint, plaintiff had also asserted that the original agreement to sell has been lost and the plaintiff has lodged a DDR, although details of the DDR were not given. Therefore, the

foundation for leading secondary evidence had already been laid in the pleadings. While filing an application, the plaintiff submitted that the original agreement to sell has been lost and is not traceable despite best efforts. Hence, the application was filed for permission to lead secondary evidence.

In the considered opinion of this Court, there is no provision for moving an application for seeking formal permission to lead the secondary evidence. Section 65 of the Evidence Act does not envisage filing of any application for leading secondary evidence. A wrong practice is being followed by the subordinate courts. Sections 63 and 65 of the Evidence Act deals with the secondary evidence. Sections 63 and 65 of the Evidence Act are extracted as under:-

“63. Secondary evidence

Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained;

(2) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies.

(3) copies made from or compared with the original ;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a documents given by some person who has himself seen it.

Illustration

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents

of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine copy of the original, is secondary evidence of the original.

65. Cases in which secondary evidence relating to documents may be given

Secondary evidence may be given of the existence, condition, or contents of a documents in the following cases:-

*(a) When the original is shown or appears to be in the possession or power—
of the person against whom the document is sought to be proved, or
of any person out of reach of, or not subject to, the process of the Court or
of any person legally bound to produce it,
and when, after the notice mentioned in section 66, such person does not produce it;*

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in ⁴⁰[India] to be given in evidence ;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”

From the reading of the aforesaid sections, it is apparent that if primary evidence is not available, the party can lead secondary evidence. The evidentiary value of such secondary evidence would be considered by the Court at the time of ultimate decision of the case. However, secondary evidence cannot be refused to lead on the ground that the evidence regarding loss of document is not available.

The application for secondary evidence can always be allowed subject to proof of the original and loss thereof.

In view of the aforesaid, the revision petition is allowed, the order under challenge is set aside. The application for permission to lead secondary evidence shall stand allowed.

May 15, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No