

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3635 of 2016

Date of Decision: May 10, 2018

Karan Singh & others

...Petitioners

Versus

Shelle Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Mukesh Rao, Advocate,
for the petitioners.

Mr.N.K.Malhotra, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present revision is directed against the impugned order dated 22.1.2016 (Annexure P-9) passed by the Civil Judge (Junior Division), Rohtak, whereby the application filed by the respondent-plaintiff Shelle Ram for proving the agreement to sell dated 21.11.2008 by way of secondary evidence, has been allowed.

Mr.Mukesh Rao, learned counsel appearing on behalf of the petitioner-defendants submits that the respondent-plaintiff, as per the averments in the plaint seeking specific performance of the agreement, *ibid*, had sent a legal notice calling upon the petitioner-defendants to perform their part of the agreement, which was duly replied by denying the same. The suit aforementioned was filed on 21.11.2011. However, on 1.9.2012, an application for proving the agreement to sell by way of secondary evidence was submitted. The same was emphatically contested. In the written statement also, existence of the agreement to sell was denied. The application is bereft of reasoning whether the agreement to sell is a

photocopy or a copy of the copy. In support of his contention, relied upon the judgment rendered by this Court in **Ram Karan Khichar Versus Mangal Deep Cooperative House Building Society Ltd.Hisar & others,** 2016 (1) PLR 509, wherein by laying reliance upon **Nawab Singh Versus Inderjit Kaur,** (1999) 4 SCC 413, this Court set-aside the similar impugned order, whereby photocopy of the document was permitted.

It was next contended that nothing prevented the respondent-plaintiff to annex the original agreement to sell along with the plaint.

Mr.N.K.Malhotra, learned counsel appearing on behalf of the respondent-plaintiff submitted that the impugned order is perfect, legal and justified and at the best, this Court can put a caveat for leading the secondary evidence by enabling the respondent to prove the existence and loss, though DDR was lodged. The authenticity and genuinity of the document can always be seen at the time of leading evidence, for, the witnesses of the same can always be cross-examined. In support of his contention, relied upon the ratio decidendi culled out by this Court in **Smt.Sobha Rani Versus Ravi Kumar,** 1999 (1) R.C.R. (Civil) 98 and, thus, urged this Court for upholding the order under challenge by dismissing the petition.

I have heard the learned counsel for the parties and appraised the paper book.

The suit, as indicated above, was filed on 21.11.2011. Order 13 Rule 1 CPC as amended w.e.f. 1.7.2002, provides that the parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement. No explanation has come forward as

to why the respondent-plaintiff has not placed on record the original document, for, the petitioner-defendants emphatically denied the existence of the document by replying to the legal notice. The contents of the application do not explain as to whether the secondary evidence brought on record is photocopy or second copy of the original agreement to sell, for, whenever a party actually enters into an agreement for sale of the property, always two copies are prepared. There is no explanation in the application about the existence of the second agreement to sell. All these factors have not been taken into consideration by the trial Court. The Court has also given the blanket permission to the respondent-plaintiff to lead secondary evidence without putting any condition regarding the existence and loss of the document. The order is, thus, wholly without jurisdiction.

It is settled law that a photocopy of the document cannot be produced as secondary evidence. The aforementioned view of mind is derived from the judgment rendered by this Court in **Ram Karan Khichar's case (supra)**. The relevant paragraphs are reproduced as under:-

“5. For the purpose of leading secondary evidence, two important events are required to be proved, i.e., existence and loss of the document. It is settled law that photocopy of the document cannot be permitted to be produced on record by way of secondary evidence. In case, the agreement had actually been entered into between the respondent-plaintiff and Jan Sewa Society, the respondent-plaintiff would be having the second copy or carbon copy of the same. However, an attempt was made to prove the same, but the witnesses of the respondent-plaintiff, i.e., DW-9 and DW-10 feigned ignorance of the existence of the aforementioned agreement. Once the aforementioned agreement has not been found to be in existence, secondary evidence cannot be permitted. In my view, the view expressed by the trial Court in declining the

application cannot be said to have been without jurisdiction.

6. *Even in the written statement, no such agreement has been pleaded, in essence, the secondary evidence sought to be placed on record, even if granted, would not be taken into consideration being beyond pleadings. The judgment cited by the learned counsel for the petitioner, i.e., Nawab Singh Versus Inderjit Kaur, (1999) 4 SCC 413 is based upon the facts and circumstances of the case for the reason that the other party, which sought the secondary evidence, categorically stated that the original is in possession of the respondent and he did not produce the same. It is not the position in the present case, therefore, the said judgment does not apply to the facts of the present case.*

7. *In view of what has been noticed above, the impugned order is upheld. The revision petition is accordingly dismissed.”*

For the reasons stated above, the impugned order is set-aside.

Revision petition stands allowed.

May 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No