

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

**Civil Revision No.3756 of 2018
Date of Decision:31.05.2018**

Gurejeet Singh

.....Petitioner

Vs

Ranjit Kaur and another

....Respondents

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

Present:Mr. A.K. Walia, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 20.04.2018 passed by the Civil Judge (Sr. Divn.) Mansa whereby an application for leading secondary evidence in respect of agreement to sell dated 14.01.2015 executed between Satgur Singh through his mother Ranjit Kaur (plaintiff) and Gurjit Singh(defendant) was dismissed.

[2]. Brief facts are that the plaintiffs filed a suit for recovery of Rs.2,00,000/- along with interest @ 12% per annum from 14.01.2015 till realization of the amount with costs of the suit.

[3]. Earlier application under Order 11 Rule 14 CPC was

filed by the plaintiffs for directing the defendant to produce original agreement to sell dated 14.01.2015. The defendant denied execution of said agreement to sell between him and the plaintiff No.1. The application was dismissed on 17.01.2018. Thereafter plaintiffs filed the application for leading secondary evidence to prove the agreement to sell dated 14.01.2015 executed between Satgur Singh through his mother Ranjit Kaur and Gurjeet Singh defendant. Though the defendant has denied execution of agreement to sell in reply to application under Order 11 Rule 14 CPC, however in para no.3 of the written statement, he admitted its execution. Defendant also stated that he had already paid an amount of Rs.2 lakhs for the land. Date for execution of sale deed was fixed as 30.04.2015. He further stated that on 29.04.2015 another agreement to sell was executed. Leading of secondary evidence in respect of agreement to sell dated 14.01.2015 was claimed to be just and proper.

[4]. Defendant contested the application on the ground that earlier application under Order 11 Rule 14 CPC was dismissed and the present application does not fulfill the ingredients of Section 65 of the Evidence Act. Plaintiffs cannot collect evidence by moving the application on false grounds. It was submitted by the defendant that since no agreement to sell was

executed, therefore, proof of loss and existence have to be established on record. Defendant has never admitted the existence of said document, nor the loss has been established by the plaintiffs.

[5]. The Civil Judge (Sr. Divn.) Mansa accepted the application on the premise that the plaintiffs have already pleaded about two agreement to sell dated 14.01.2015 and 29.04.2015 in the pleadings. There was no denial to the agreement to sell dated 14.01.2015 by the defendant in the written statement. The defendant's case was that the agreement to sell was executed between defendant and plaintiff No.2, when earnest money to the tune of Rs.2 lakhs was paid to the defendant on 29.04.2015. Agreement to sell dated 14.01.2015 was cancelled at the instance of plaintiff No.2 and there was no dispute between the parties in respect of agreement to sell dated 14.01.2015 because the case of the plaintiffs was that virtually the agreement to sell dated 14.01.2015 was executed between defendant and plaintiff No.1 on behalf of his mother. The copy of agreement to sell dated 14.01.2015 which has been placed on record by the plaintiff has already been signed by defendant and plaintiff No.2. It would be matter of evidence whether the said agreement to sell was executed by defendant with plaintiff No.1 or with plaintiff No.2. Considering the *prima*

facie case in favour of the plaintiffs and in view of written statement of the defendant wherein he has not denied the existence of agreement to sell dated 14.01.2015, the Civil Judge (Sr. Divn.), Mansa accepted the application vide the impugned order.

[6]. The denial on behalf of the defendant has come only in reply to the application under Order 11 Rule 14 CPC. In para No.3 of the written statement, defendant has admitted its execution and also stated that he had paid an amount of Rs.2 Lakhs to the plaintiffs and target date was fixed as 30.04.2015. The second agreement to sell was executed on 29.04.2015. By means of secondary evidence, the earlier agreement to sell dated 14.01.2015 is sought to be proved.

[7]. Considering the legal position and in view of **Bipan Shantilal Panchal vs. State of Gujarat, 2001(1) R.C.R. (Criminal) 859** the law laid down on criminal side was appreciated. It was laid down that the procedure has been set for receiving the document when the same is objected to during trial. The Hon'ble Apex Court has castigated the practice of holding up trial on objections taken at the time of tendering documents in evidence. At this stage, asking the Court to pass an appropriate order on objections has been categorized as an '*archaic practice.*'

[8]. Leading of evidence at the stage pursuant to the passing of impugned order would not crystallize any substantial right in favour of the plaintiff, rather the evidence led by the parties would be decided at the threshold of admissibility and validity and genuineness of the documents in terms of execution at a later stage. The lawful consideration of such a criteria would be at a later stage, though there is no provision in law for de-exhibiting the document already exhibited in the evidence, but the exhibition of document if objected to, has to be answered in terms of its admissibility at a later stage. The offer of secondary evidence can be at best impeached in cross-examination. It will be for the Court to to examine and decide as to whether it will be appropriate to rely such secondary evidence or not for want of compliance of Section 65 of the Evidence Act. If ultimately the Court finds that secondary evidence is not reliable, the Court is still at liberty to eschew the same. The attempt of party for production of secondary evidence cannot be thrown at that stage. The law laid down in **Dr. S.P. Arora vs. Satbir Singh, 2010(5) R.C.R. (Civil) 350** and **Simar Pal Singh vs. Hakam Singh, 2009(14) R.C.R. (Civil) 273** can be relied.

[9]. In terms of ratio as culled out from **H. Siddiqui (dead) by LRs vs. A. Ramalingam, 2011(2) RCR(Civil) 696**, it can be noticed that though the provision permits the parties to adduce

secondary evidence, but the same is subject to large number of limitations. The secondary evidence relating to the contents of the document is inadmissible until non-production is accounted for, so as to bring within one or the other cases provided for in the Section. When there is no factual foundation led for secondary evidence it is not permissible for the Court to allow the party to adduce secondary evidence. It is a settled principle of law that the secondary evidence must be authenticated by fundamental evidence. Mere exhibition of a document does not dispense with the proof of its execution, therefore, it is squarely within the power of the Court to decide the admissibility of a document in secondary evidence at a subsequent state. Existence of foundation for leading secondary evidence in the written statement would also be taken care by the trial Court at the appropriate stage.

[10]. The contention of both the parties would be adequately answered by the Court at the time of consideration of the issue on merits. Vide the impugned order, the leading of secondary evidence has been allowed. It does not amount to certify the admissibility of such a document produced on record at this stage of litigation. It is always open to the Court to comment upon admissibility of the document in view of evidence led by the parties. The Court has to see the admissibility of the

document. Mere denial by the parties to produce original document in whose possession it 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 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. In **U. Sree vs. U. Srinivas, 2013 (1) RCR (Civil) 883**, the Hon'ble Apex Court has commented that to permit secondary evidence which has been destroyed by the person in whose possession it was and whose it created an enforceable legal right or an obligation, is normally not to be allowed as secondary evidence. The secondary evidence of such a nature may be tampered with or changed and it would be against public policy to take chance of running the risk of fraud being committed.

[11]. For the reasons recorded hereinabove, I find that no error of jurisdiction in the order passed by the Civil Judge (Sr. Divn.) Mansa. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

May 31, 2018

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No