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

**Civil Revision No.5070 of 2016
Date of Decision:14.08.2018**

Khushi Mohammad

.....Petitioner

Vs

Megh Singh and others

....Respondents

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

Present:Mr. Jai Bhagwan, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 26.07.2016 passed by the Civil Judge (Jr. Divn.) Malerkotla whereby an application under Section 65 of the Evidence Act for leading secondary evidence was allowed.

[2]. Brief facts of the case are that plaintiff/respondent No.1 filed a suit of declaration to the effect that he is owner in possession of 1 *Bigha* 14 *Biswas* of land as per *jamabandi* for the year 2003-04. The sale deed allegedly executed by the plaintiff in favour of mother of the defendants i.e. sale deed dated 17.07.1989 in respect of suit land was claimed to be illegal, null and void. Permanent injunction was also sought

restraining the defendants from alienating the suit property in any manner.

[3]. Plaintiff pleaded that in the year 1989, mother of the defendants in connivance of Mohd. Ismail, Numberdar of the village and Hameed Khan got executed the sale deed in her favour by way of impersonation. Plaintiff never appeared in the office of Sub-Registrar, Malerkotla, nor executed the sale deed dated 17.07.1989.

[4]. The suit was contested by the defendants.

[5]. Plaintiff led his evidence. Learned counsel for the plaintiff closed the evidence on 20.05.2015 by making following submissions before the trial Court:-

“Stated that in the evidence of the plaintiff, the judgment dated 04.12.2014 tilted as Piara Singh vs. Avinash Kaur as Ex.P-3 and Judgment dated 04.12.2014 titled as 'Baksish Singh vs. Avinash Kaur as Ex.P-4, Affidavit of Mohd. Ismail dated 24.08.2006 marked as Mark-A and Jamabandi for the year 2003-04 of village Sadrabad Ex.P-5 close the evidence of the plaintiff after tendering the aforesaid documents.”

[6]. The affidavit of Mohd. Ismail dated 24.08.2006 was marked as Mark 'A'. Thereafter defendants also concluded their evidence. No evidence was led in rebuttal. When the case was fixed for arguments, an application under Section 65 of the

Evidence Act came to be filed with the pleadings that the alleged sale deed dated 17.07.1989 executed by the plaintiff in favour of mother of defendants was illegal and result of fraud and the plaintiff wants to prove the signature and affidavit scribed by the deponent Mohd. Ismail. The stamp paper and affidavit was purchased by Mohd. Ismail from Shiv Kumar Bansal on 24.08.2006. Mohd. Ismail was examined as witness on 17.09.2015 as DW-2. In his cross-examination conducted by the learned counsel for the plaintiff, the witness denied his signature on the stamp paper which was allegedly purchased by him on 24.08.2006 and the same was used in the affidavit by him.

[7]. The application under Section 65 of the Evidence Act came to be filed at the stage of arguments particularly when no evidence was led by the plaintiff in affirmative evidence, nor any such evidence was brought in rebuttal.

[8]. The trial Court vide order dated 26.07.2016 accepted the application on the premise that Mohd. Ismail was examined as DW-2 and has denied the execution of affidavit dated 24.08.2006. The original of the affidavit was not in possession of the plaintiff. The plaintiff has challenged the sale deed dated 17.07.1989 executed by him on the ground of fraud. In the affidavit dated 24.08.2006, Mohd. Ismail has also supported the

version of the plaintiff and by denying the execution of the affidavit. In view of this, the trial Court allowed the application by way of secondary evidence as well as for leading additional evidence.

[9]. I have considered the submissions made by learned counsel for the petitioner.

[10]. It is a settled principle of law that the plaintiff can lead secondary evidence by exhibiting the same at the relevant stage, even if the same was objected to by the opposite party. The document can be received in evidence without commenting upon its authenticity and genuineness at that stage. After receiving the document in evidence with objection, the trial Court can examine the admissibility and genuineness of the document at the later stage. If the execution of such document is proved with reference to evidence, the same can be relied as a secondary evidence. If the execution of the same is not found to be proved, the evidence/document can be eschewed by the Court.

[11]. In **Bipin Shantilal Panchal Vs. State of Gujarat, 2001(1) RCR (Criminal) 859**, the Hon'ble Apex Court laid down that the procedure has been set for receiving the documents 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 that stage, asking the Court to pass an appropriate order on objections has been categorized as an '*archaic practice*'.

[12]. The leading of evidence at the stage pursuant to the 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 document. 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 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 Evidence Act. In case, Court finds the secondary evidence not reliable, the Court is at liberty to eschew the same. However, the attempt of a party for

production and to exhibit the document 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 the aforesaid context.

[13]. The contentions of both the parties would be adequately answered by the Court at the time of consideration of the issue on merits. 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 tempered with or changed and it would be against public policy to take chance of running the risk of fraud being committed.

[14]. The evidence sought to be led by way of secondary evidence was not claimed at the relevant stage and the evidence of plaintiff was closed by way of statement of learned counsel appearing on his behalf. The said order closing the evidence of the plaintiff was never assailed by the plaintiff in any forum, nor any evidence was led by the plaintiff at the state of rebuttal, therefore, filing of application under Section 65 of the

Act at such belated stage would not have the mechanism of leading evidence in terms of admissibility, genuineness and validity of the document. The document in question cannot be tested on the aforesaid principle. At this stage in such eventuality the prayer granted by the trial Court cannot be held to be on legal parameters. As a result of that, this revision petition is allowed. The impugned order dated 26.07.2016 passed by the Civil Judge (Jr. Divn.) Malerkotla is set aside, thereby dismissing the application filed under Section 65 of the Evidence Act.

August 14, 2018

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Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No