

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

CR No.7151 of 2017

Date of decision: 9th January, 2018

Jai Singh

... Petitioner

Versus

Arbinder Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Inderpal S. Parmar, Advocate for the petitioner.

FATEH DEEP SINGH, J.

Arbinder Singh and others (now respondents) filed against the present petitioner Jai Singh and others a suit for declaration seeking different reliefs besides declaration to the effect that power of attorney dated 23.04.2007 executed by plaintiff No.1 Arbinder Singh in favour of defendant No.1 Jai Singh which was notarized and embossed with the office of Commissioner, Division Jalandhar on 21.05.2007 bearing No.2767 related to land in Hadbast No.169 and not to Hadbast No.170 claiming that the words were incorporated after embossment by fabrication and forgery. It was during the course of trial an application was moved on behalf of the plaintiff under Section 65 of the Indian Evidence Act to prove the contents of the actual and original power of attorney, after it came into evidence on the record through the testimony of PW7 Ashok Kumar, Embossing Clerk from the office of

Commissioner, Jalandhar Division, Jalandhar that the original application form has been lost and was not traceable.

The stand of the defendants was of denial and as to maintainability. The application stood allowed vide impugned order dated 11.08.2017 by the Court of learned Civil Judge (Junior Division) Jalandhar. The same is under challenge by virtue of invocation of Section 115 CPC read with Article 227 of the Constitution of India.

Upon hearing Mr. Inderpal Singh Parmar, Advocate for the petitioner. The moot point in the suit besides others was the very factum of contents of power of attorney which was embossed from the office of Commissioner and which application has since been lost. Thus, such a document was very much necessary to bring about evidence to assist the Court for judicious appreciation of the true facts. It is during the course of trial it has been revealed by PW7 as to the loss of this essential document.

Section 65 of the Indian Evidence Act, 1872 which deals with cases in which secondary evidence relating to documents may be given, under clause (c) lays down the condition in which contents of a document and its existence can be proved through secondary evidence and which covers within it when the original document has been destroyed or lost and which in the present scenario is not attributable to the plaintiff. Being a public document by virtue of Section 74(2) of the Indian Evidence Act comes within the classification of a public document and therefore, admissible in evidence. It is a different thing as is sought to be

propounded by learned counsel for the petitioner that the same is not admissible is subject matter of decision which is subject to the encompass of the trial Court which is obliged to examine probative value of the document so produced in the Court and thus, decide the very admissibility of such document in secondary evidence. Learned counsel could not impress this Court as to how there has been miscarriage of justice falling within the purview of Section 115 of the Code of Civil Procedure. Finding no merit, the present petition stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

January 9, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No