

116

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

**Civil Revision No.7273 of 2018  
Date of Decision: 26.10.2018**

**Jatinder Singh**

**.....Petitioner**

**Vs**

**Jaswant Singh and another**

**....Respondents**

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

Present: Mr. Virinder K. Shukla, Advocate  
for the petitioner.

\*\*\*\*

**RAJ MOHAN SINGH, J.**

[1]. Petitioner has challenged the order dated 21.09.2018 passed by the Civil Judge (Jr. Divn.) Moga, whereby the application filed by respondent No.1 for proving some documents by way of secondary evidence was allowed.

[2]. Brief facts are that the plaintiff filed a suit for declaration to the effect that he is owner in joint-possession to the extent of 1/3<sup>rd</sup> share out of land measuring 168 *Kanals* as shown in the plaint. The alleged mutation No.15081 sanctioned in pursuance of partition of land and *khasra girdawari* of Rabi 2004 in Roznamcha for the year 2003-04 were claimed to be illegal and were liable to be corrected to reflect 1/3<sup>rd</sup> share of the plaintiff in the suit land. Consequential relief of permanent injunction was

also sought restraining the defendant No.1 from alienating the suit property.

[3]. Defendants sought to prove the following documents by way of secondary evidence:-

- “a) *Power of Attorney dated 06.02.1979, registered on 07.02.1979 with Sub-Registrar, Jalandhar, executed by Jatinder Singh Sahota son of Udham Singh.*
- b) *Agreement to sell dated 11.02.1979 executed by Jatinder Singh Sahota in favour of the present defendant/applicant Jaswant Singh regarding the suit land;*
- c) *Writing dated 11.02.1979 duly signed by Jatinder Singh Sahota in his own hand writing as well as by the present defendant/applicant in his own hand writing.”*

[4]. The application was opposed by the plaintiff on the ground that the application was not maintainable. The alleged agreement to sell dated 11.02.1979 and writing dated 11.02.1979 are inadmissible in evidence being improperly stamped and were only copies. The relief on the basis of these documents and receipts was also claimed to be time barred. Plaintiff further claimed that in the absence of proof of existence and loss, no such secondary evidence can be allowed.

[5]. The trial Court found that the first document sought to be proved by way of secondary evidence was power of attorney dated 06.02.1979. The same is a registered document and

certified copy of the same can be proved by way of secondary evidence in accordance with law. Remaining documents viz. agreement to sell dated 11.02.1979 and writing dated 11.02.1979 have been explained in the context of para No.4 of the counter claim that the original documents were given to Udham Singh father of the plaintiff, who has expired. The factum of existence and loss would be proved subject to leading evidence. The admissibility, genuineness and veracity of the same can be determined by the Court at the relevant stage.

[6]. Learned counsel for the petitioner vehemently submitted that existence and loss with reference to non-compliance of Section 66 of the Evidence Act would make the application liable to be dismissed. Leaned counsel relied upon **Mukesh Kumar alias Motta vs. State of Haryana, 2011(1) R.C.R. (Civil) 675**. The perusal of the aforesaid judgment would show that the factum of destruction of document was highlighted by the person in whom it created an enforceable legal right or an obligation and such prayer cannot be allowed.

[7]. There cannot be any dispute with regard to the aforesaid proposition. In the instant case, loss of original document on the ground that the same were handed over to Udham Singh father of the plaintiff was pleaded. Udham Singh had died, therefore, existence and loss are sought to be proved

by way of leading secondary evidence. Whether the party seeking leave of the Court to lead secondary evidence will ultimately succeed in proving the document or not, is a question of fact and the same depends upon quality of evidence to be led by the parties. The grant of leave to lead secondary evidence does not mean that the document is admitted in evidence, nor it is a finding of existence or loss of the document. It does not mean that it will serve as a finding of existence of any of the conditions indicated in Section 65 of the Evidence Act. It only amounts to holding an enquiry regarding existence of document and its loss under some circumstances. Failure or success to prove the existence of document cannot be pre-determined that too without providing opportunity.

[8]. Whether existence and loss is proved or not will be determined on the basis of evidence to be led by the parties after grant of leave and the material/evidence is evaluated by the Court. The offer of secondary evidence can be best impeached in cross-examination. It is for the Court to examine and decide whether it is appropriate to rely on such evidence produced by the party in terms of Section 65 of the Evidence Act. In case execution of documents is not proved and the Court finds the secondary evidence legally not reliable, the Court would be at liberty to eschew the same. However, the attempt of

a party for production and to exhibit documents cannot be thrown out at the threshold of the technicalities. Reference can be made to **Ashok Kumar Sachdeva vs. Harish Malik, 2007(4) R.C.R. (Civil) 311** and **Dr. S.P. Arora vs. Satbir Singh, 2010(5) R.C.R. (Civil) 350.**

[9]. In **Bipin Shantilal Panchal vs. State of Gujarat, 2001(1) R.C.R. (Criminal) 859**, the Hon'ble Apex Court had castigated the practice of holding up trial on objections taken at the time of tendering documents in evidence to be an 'archaic' practice. At that stage, asking the Court to pass appropriate order on the objections has been deprecated. The Court laid down that the procedure has been set up for receiving the documents, when the same is objected to during trial and holding up of trial on the objections would be illegal. Leading of evidence at the stage pursuant to passing of order would not crystallize any substantial right of the parties, rather the evidence led by the parties would be tested at the threshold of admissibility, validity and genuineness of the documents in terms of its execution and nature. Later stage would be an appropriate stage for lawful consideration in the context of validity, admissibility and genuineness of the document. There is no provision for de-exhibiting the document, therefore, the offer of secondary evidence can be 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 Act.

[10]. In ***U. Sree vs. U. Srinivas, 2013(1) R.C.R. (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 right or an obligation, is normally not to be allowed as secondary evidence. The secondary evidence of such nature may be tampered with and it would be against public policy to take chance of running the risk of fraud being committed. No such proposition is involved in the present case.

[11]. In view of aforesaid legal position, the indulgence granted by the trial Court by allowing respondent No.1 to lead secondary evidence cannot be faulted with. The impugned order is not found to be suffering with any error of jurisdiction or perversity. This revision petition is accordingly dismissed.

October 26, 2018

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No