

CR Nos.7790 and 8074 of 2015 (O&M)

209

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

Date of decision : 26.11.2018

1. CR-7790-2015 (O&M)

Balbir Singh (deceased) through his LRs

... Petitioner

Versus

Shiv Raj Singh Dabra and another

... Respondents

2. CR-8074-2015 (O&M)

Balbir Singh (deceased) through his LRs

... Petitioner

Versus

Shiv Raj Singh Dabra and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Mayank Aggarwal, Advocate
for the respondents.

AMIT RAWAL, J.

This order of mine shall dispose of two revision petitions bearing CR No.8074 of 2015 titled as “Balbir Singh (deceased) through his LRs V/s Shiv Raj Singh Dabra and another” filed at the instance of the plaintiff-petitioner against the order passed on an application submitted by the defendants for allowing the secondary evidence to prove on record the

CR Nos.7790 and 8074 of 2015 (O&M)

agreement to sell dated 29.07.2006 subject to the loss and existence and **CR No.7790 of 2015** titled as **“Balbir Singh (deceased) through his LRs V/s Shiv Raj Singh Dabra”**, filed at the instance of the plaintiff for sending the agreement to sell (Ex.D3) with vakalatnama for examination and comparison of thumb-impressions of Balbir Singh to the Forensic Science Laboratory.

Mr. Rajesh Garg, learned Senior Counsel assisted by Mr. Rakesh Dhiman, submitted that the plaintiff-petitioner has filed a suit for cancellation of the aforementioned agreement to sell. The defendants opposed the same and during the pendency of the suit, moved an application under Section 65 of the Indian Evidence Act for production of the agreement. The same was not produced. In such circumstances, an occasion arose for the defendants to move an application for secondary evidence. On the contrary, an occasion for sending the agreement to sell in Forensic Science Laboratory, arose, for, the defendants in other suit seeking recovery had set out the agreement to sell of even date, but of different determination, thus, in these circumstances, the application, aforementioned, was filed.

I am afraid the aforementioned argument is not sustainable, for, the photocopy of documents for comparison of thumb-impression cannot be sent to the Forensic Science Laboratory, but the plaintiff shall be at liberty to produce on record the copy of the written statement along with list of reliance of the documents, in a suit for recovery, as an evidence in support of the defence.

At this stage, when confronted with this situation, learned counsel for the petitioner does not press the present revision petition i.e. CR-7790-2015.

CR Nos.7790 and 8074 of 2015 (O&M)

Ordered accordingly.

With regard to the other revision petition i.e. CR-8074-2015, I am of the view that the rider imposed with regard to the existence and loss would require a detailed evidence enabling the opportunity to the plaintiff to rebut through independent and cogent evidence. It is not a blanket permission regarding the proof of the document.

No ground is made out for interference. Resultantly, the revision petition i.e. CR-8074-2015 is also dismissed.

26.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**