

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

CR No.8316 of 2017(O&M)
Date of Decision: 27.11.2018

Jagir Kaur

... Petitioner

Vs

Hari Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Mr. S.S. Salar, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Perusal of the record would show that the application under Section 65 of the Evidence Act was filed by defendant No.2. No application was filed by defendant No.3/petitioner.

[2]. Learned counsel for the petitioner contended that in **B. Vijaya Bharathi Vs. P. Savitri and others, 2018(1) RCR (Civil) 4**, the ratio laid down in **Jugraj Singh Vs. Labh Singh, (1995) 2 SCC 31** and **M.M.S. Investments Madurai Vs. V. Veerappan, 2007(2) RCR (Civil) 816** has been over-ruled. The obligation imposed by Section 16 of the Specific Relief Act is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c)

thereof. A Court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the obligation.

[3]. Learned counsel further contended that in **Bipin Shantilal Panchal Vs. State of Gujarat, 2001(1) RCR (Criminal) 859**, the Hon'ble Apex Court has castigated the practice of holding up trial on objections taken at the time of tendering documents in evidence and such a practice has been categorized as an 'archaic practice'. 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 its execution. If a document is objected to, the Court has to answer its admissibility at a later stage. The offer of secondary evidence can be at best impeached in cross examination. Later stage would be appropriate stage for lawful consideration for such criteria i.e. validity, admissibility and genuineness of the documents. 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** has been relied.

[4]. At this stage, learned counsel for respondent No.1

submitted that since the application has not been filed by defendant No.3/petitioner, therefore he cannot be permitted to claim the relief which was initially espoused by defendant No.2 being subsequent vendee. Petitioner is a subsequent vendee and had purchased the litigation with open eyes. Learned counsel further submitted that in case, defendant No.3/petitioner files an application under Section 65 of the Evidence Act, the respondent(s) will not set up a ground of dismissal of earlier application filed at the instance of defendant No.2. The said application may be decided by the trial Court in accordance with law.

[5]. In view of consensus arrived at between the parties, this revision petition is disposed of with a direction to the petitioner to file an appropriate application before the trial Court. In the event of doing so, trial Court shall decide the same in accordance with law.

27.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No