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

CR No. 948 of 2018 (O&M)
Date of Decision: 16.07.2018

Rajiv Sharma

....Petitioner

Vs

Vikas Bhatia and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sushil Jain, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

1. As per office report, respondents No.1 to 4 have been duly served with *dasti* process through the learned counsel appearing in the trial Court.
2. Service is taken to be complete, even though the ordinary process has not been received back served or otherwise.
3. Petitioner has assailed the order dated 19.12.2017 passed by Civil Judge (Junior Division), Sonipat vide which the application for permission to lead secondary evidence filed by the petitioner was dismissed.
4. Original agreement to sell with receipt were not traceable despite the efforts made by the plaintiff. The said

agreement to sell was duly notarized by Notary Public and was duly scribed and witnessed by the attesting witnesses. The application was dismissed primarily on the ground that it was legally incumbent on the part of the plaintiff to prove that the original agreement to sell dated 28.05.2012 has been lost. Secondary evidence can be allowed only when loss of original is proved. Mere because respondent has denied the possession of original agreement, it cannot be presumed that original is lost.

5. I have considered the submissions made by learned counsel for the petitioner.

6. In **Bipin Shantilal Panchal Vs. State of Gujarat, 2001(1) RCR (Criminal) 859**, the Hon'ble Apex Court laid down the procedure 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. Though the said case was relating to criminal case but the Court while interpreting Section 65 of the Evidence Act held that at the relevant stage, asking the Court to pass an appropriate order on the objections would be an 'archaic practice'.

7. The leading of evidence at that stage would not crystallize any substantial right in favour of the party, 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 and nature at the relevant stage. Later stage would be an appropriate stage for lawful consideration and appreciation of such a criteria i.e. validity, admissibility and genuineness of the document. Though there is no provision for de-exhibiting the document already exhibited in evidence, but mere exhibition of document does not dispense with proof of execution, if at a later stage, the documents is found to be wanting in terms of existence and loss, the evidence so led by the parties can be eschewed by the Court. Till such time, the Court cannot be obligated to decide admissibility and genuineness of the said document merely on the objection raised by the party.

8. 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.

9. The contentions of both the parties would be adequately answered by the Court at the time of consideration of the issues on merits. Further 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.

10. The aforesaid scenario would also be tested by the trial Court at the threshold of existence and loss of the document in question.

11. In view of above, curtailing the right to lead secondary evidence would not be in consonance with the settled principle of law.

12. For the reasons recorded hereinabove, the impugned order is set aside. The application for leading secondary evidence is allowed subject to existence of document and loss thereof to be proved by the petitioner at the relevant stage.

16.07.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No