

116

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

**Civil Revision No.174 of 2019
Date of Decision: 14.01.2019**

BALWINDER SINGH

.....Petitioner

Vs

PRIYANKA GOYAL AND OTHERS

....Respondents

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

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 18.09.2018 passed by the Civil Judge (Jr. Divn.) Moga, vide which application under Section 65 of the Evidence Act for leading secondary evidence by the plaintiffs was allowed.

[2]. The plaintiffs filed an application for production of gift deed by alleging that the same was in possession of the defendants. The said fact was denied by the defendants, rather the same was claimed to be in possession of one Harinder Singh. Gift deed is a registered document. The validity of the gift deed has been denied by the defendants and the same was claimed to be fraudulent having executed on account of

misrepresentation and undue influence practices upon Daya Singh deceased.

[3]. In **Bipin Shantilal Panchal vs. State of Gujarat, 2001 (1) RCR (Criminal) 859**, the Hon'ble Apex Court has laid down that the procedure has been set for receiving the documents when the same is objected to during trial. The Hon'ble Court has castigated the practice of holding up trial on objections taken at the time of tendering of documents in evidence. At that stage, asking the Court to pass an appropriate order on the objection was categorized as an '*archaic practice*'. Leading of evidence at the stage pursuant to passing of order could not crystallize any substantial right in favour of the defendants, rather the evidence led by the parties would be tested by the Court at the threshold of admissibility, validity and genuineness in terms of its execution at a later stage. In any case, the later stage would be the relevant stage for lawful consideration of such a criteria in terms of validity, admissibility and genuineness of the document.

[4]. In **Ashok Kumar Sachdeva vs Harish Malik, 2007 (4) RCR (Civil) 311**, this Court held that the party should be granted leave to lead secondary evidence. Whether the party ultimately succeeds in proving the document or not is question of fact and the same depends upon nature of evidence led by the parties. To grant leave to lead secondary evidence does not

mean that the document is admitted in evidence nor it is a finding of existence of any of the conditions indicated under Section 65 of the Evidence Act. It only amounts to holding up of inquiry in respect of existence of document and its loss under some circumstances. Failure or success of proving existence of document or its loss cannot be pre-determined that too without providing opportunity. Whether it is proved or not, is to be seen after the leave is granted and the material produced by the parties is evaluated by the Court.

[5]. 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**, it was held that the offer of secondary evidence can be at best impeached in cross-examination. It is for the Court to examine and decide whether it is appropriate to rely upon such secondary evidence or not for want of compliance of Section 65 of the Evidence Act.

[6]. In view of aforesaid legal propositions, the indulgence granted by the trial Court cannot be faulted with. In case the Court finds that the secondary evidence led by the party/plaintiffs is not legally reliable, the Court would be at liberty to eschew the same. However, the attempt of the party for production or to exhibit the document at this stage cannot be throttled in the manner as propounded by learned counsel for

the petitioner.

[7]. This revision petition is found to be devoid of merits and the same is accordingly dismissed.

January 14, 2019

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Whether speaking/reasoned
Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No
Yes/No