

CR-2633-2018 (O&M)

136-204

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

CR-2633-2018 (O&M)

Date of decision : 14.01.2019

Baldev Krishan (deceased) through LRs

... Petitioner

Versus

Kali Ram (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Atul Gaur, Advocate for the petitioner.

Mr. Naveen Gupta, Advocate for the respondents.

AMIT RAWAL, J. (ORAL)

CM-26740-CII-2018

For the reasons stated in the application, Annexures R-1 and R-2, are taken on record, subject to all just exceptions.

CM stands disposed of.

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The present revision petition is directed against the impugned order dated 06.03.2018 (Annexure P-1), whereby the application of the petitioner-plaintiff for leading secondary evidence to prove existence and loss of the agreement to sell dated 06.05.1983 and extension agreement to sell dated 28.12.1983, has been dismissed.

Learned counsel appearing on behalf of the petitioner submitted that the plaintiff-petitioner instituted the suit claiming specific performance of agreement to sell, aforementioned. The photocopy of the agreement was filed along with the plaint, however, third party instituted a suit and obtained stay against the alienation of the suit property and the some other area. The date was extended and it was agreed that the sale deed would be

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executed only after three months after decision by last Court of this country. The aforementioned suit, ultimately, came to be dismissed by this Court in Regular Second Appeal No.2046 of 1987, vide order dated 03.07.2013, in these circumstances, the suit was filed in the year 2013. In the pending regular second appeal, an application bearing No.1764-C of 1992 under Order 1 Rule 10 of CPC for impleading the party by enclosing the copy of the agreement to sell (Annexures A-1 and A-2) was filed and the same was rendered infructuous. It was, during the pendency of the suit, the application was dismissed. The trial Court ought to have allowed the application subject to the existence and loss, as after dismissal of the suit filed by the third party, the respondents-defendants sought compensation against third party by admitting the agreement to sell as they were deprived of the sale consideration. It would be all subject matter of the evidence. The Court below ought to have appreciated the aforementioned facts, thus, there is illegality and falsity.

Learned counsel for the respondents-defendants submitted that the impugned order, under challenge, is perfectly legal and justified as the contents of the second appeal did not reveal the area of the property, subject matter of the agreement to sell, as it pertained to 83 sq. yds, whereas the suit pertained to 298 sq. yds. RTI information reveals that the petitioner-plaintiff has not lodged any complaint before the concerned Police Station, Narwana, in respect of the loss of the agreement to sell and the story alleged is figment of imagination and just to take the benefit of the photocopy of the agreement to sell as there was complete denial of the agreement to sell, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper

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book and of the view that there is force and merit in the submissions of Mr. Gaur.

The facts indicated above are not in dispute. Prima facie, there is admission of the agreement to sell, but it is yet to be proved as to whether it is pertained to the subject matter of the suit property or not. In such circumstances, the Court below should have allowed the secondary evidence subject to the existence and loss. Until and unless, a party seeking indulgence of the Court for placing on record the secondary evidence, who is not able to prove the existence and loss, cannot be permitted to examine the same as mere exhibition of the documents does not dispense with its proof. The defendants would have a right to cross-examine and lead evidence, in rebuttal to what the plaintiff intends to lead in the application for secondary evidence qua existence and loss.

As an upshot of my findings, the impugned order, under challenge, is not sustainable in the eyes of law, much less, suffers from illegality, thus, the same is hereby set aside. However, it will be subject to the condition that plaintiff, in the first instance, shall lead evidence regarding "existence and loss" of the agreement to sell, in accordance with law.

With the aforesaid observations, the present revision petition stands allowed.

14.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No