

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 208 (2)

CR-5085-2018

Date of decision : 15.01.2019

Balwinder Singh

..... Petitioner

VERSUS

Sukhdev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ferry Sofat, Advocate, for the petitioner.

Mr. P. S. Jammu, Advocate, for the respondents.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 23.05.2018, passed by the Additional Civil Judge (Senior Division), Amloh (for short, the Trial Court), through which an application filed by the petitioner under Section 65 of the Indian Evidence Act, 1872 (for short, the Act) to prove photocopy of agreement to sell dated 14.11.2005 by leading secondary evidence has been dismissed.

The relevant facts, in brief, are that the petitioner filed a suit seeking therein to declare sale deed dated 28.01.2009, executed by respondent No. 2 in favour of respondent No. 3, as null and void. Specific performance of agreement to sell dated 14.11.2005 qua the property, as detailed and described in the headnote of the plaint (for short, the suit property) was also sought. In the alternative, the petitioner prayed for recovery of ₹89,000/- alongwith interest and damages and a direction to respondent No. 3 not to alienate the suit property during the pendency of the suit.

On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and disputed the petitioner's claim. Thereafter the Trial Court framed the issues on which the petitioner led his evidence. However, after PW-4 Harwinder Singh had been examined during the course of which he deposed that the petitioner had taken a loan from him and as security had handed over to him original agreement to sell dated 14.11.2005 which he had misplaced, the petitioner filed an application under Section 65 of the Act to prove a true photocopy of the agreement to sell dated 14.11.2005 by leading secondary evidence. On the dismissal of such application by the Trial Court, the petitioner has knocked the doors of this Court through the instant petition.

Learned counsel for the parties have been heard.

The petitioner has filed his suit to primarily seek therein specific performance of agreement to sell dated 14.11.2005. PW-4 Harwinder Singh had appeared before the Trial Court and categorically stated that the petitioner had taken a loan from him and as security had handed over to him the original agreement to sell dated 14.11.2005 which he had misplaced. Through his cross examination or otherwise the respondents could not prove anything to the contrary. Thus, this was enough to permit the petitioner to prove a true photocopy of the agreement to sell dated 14.11.2005 by leading secondary evidence especially when in the absence of such permission virtually his entire suit would fail.

The observations of the Trial Court that possession of the said document had not been proved by the petitioner are incorrect in view of the clear admission by PW-4 Harwinder Singh that the original agreement to sell

dated 14.11.2005 was handed over by the petitioner to him and that such document had been misplaced by him especially when PW-4's cross examination by the respondents could not extract any worthwhile material to hold to the contrary.

In view of the above, the impugned order is set aside and resultantly, the petitioner is permitted to prove true photocopy of agreement to sell dated 14.11.2005 by leading secondary evidence. For doing the needful, the petitioner shall be granted only two effective opportunities. Needless to say that the respondents would be granted an effective opportunity to rebut such evidence in accordance with law.

The present petition is allowed in the above terms.

15.01.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No