

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

**C.R. No.7533 of 2015 (O&M)
Date of Decision.15.02.2019**

Darshana

...Petitioner

Vs

Sarvjeet Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Khattar, Advocate for
Mr. Deepak Sharma, Advocate
for the petitioner.

Mr. Naresh Kaushal, Advocate
for respondents No.1 and 2.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed at the instance of the petitioner-defendant against the impugned order dated 23.09.2015 (Annexure P-5) whereby the application for secondary evidence to prove the agreement to sell dated 6.6.2011 has been dismissed.

It was alleged that the respondent No.1 and 2, plaintiffs, instituted the suit for possession by specific performance of agreement to sell dated 9.7.2011 in respect of plot No.1604, Sector 80, SAS Nagar, Mohali measuring 250 sq. yards with consequential relief of injunction restraining the petitioner-defendant.

The petitioner-defendant contested the suit denied the agreement to sell but explained that in fact, she had entered into agreement to sell orally to exchange the suit property with a plot in Aero City with property dealer M/s Dhaliwal Property of Mohali through Shamsher Singh and Amardeep Singh. It was verbal

agreement that the plot in dispute was of the value of 10-15 lakhs more than the plot in Aero City and difference of amount would be adjusted. The aforementioned agreement arrived at between the concerned parties and not with the respondents-plaintiffs because she was not in position to construct the house and to pay the last installment of approximately ₹1,30,000/- as the plot in Aero City was yet to be allotted. In the meantime, she could arrange the construction money with the said understanding without giving and taking anything, two agreements were executed between Amardeep Singh and Darshana on 13.06.2011 in which Amardeep Singh agreed to sell plot in the Aero City as alleging to have agreement from its owner which was entitled to get plot of 500 sq. yards under land pooling scheme vide GMADA's letter dated 9.3.2011. Similarly, present petitioner entered into an agreement to sell dated 6.6.2011 with Amardeep Singh to sell the plot measuring 250 sq. yards in Sector 80 Mohali.

The petitioner during her evidence filed an application for secondary evidence by invoking provisions of Section 65 of the Indian Evidence Act on the premise that the original agreement to sell was with Amardeep Singh, who was not a party as he was absconding owing to his involvement in many criminal cases and was also an accused in complaint Ex.D3, thus, the agreement to sell was required to be proved through secondary evidence otherwise specific pleading in the plaint would remain unproved. The aforementioned application was opposed, resulting into dismissal.

Mr. J.S. Khattar for Deepak Sharma, learned counsel

appearing for the petitioner submitted that it is not a case where the agreement to sell dated 6.6.2011 is not subject matter of the suit but was specifically pleaded in the written statement as photostat copy of the same was in possession of the petitioner and original was with Amardeep Singh. In the replication, this fact though was controverted but not specifically denied in the evidence. It would be expedient in the interest of justice to lead evidence by way of secondary evidence, subject to the convenience of law.

Per contra, Mr. Naresh Kaushal, learned counsel appearing on behalf of the respondents submitted that Amardeep Singh is not a party to the suit. It was an independent transaction and this agreement has nothing to do with the present case as other contract cannot be pressed into service to thwart the claim of the respondents-plaintiffs. It was an attempt to delay the adjudication of the suit, thus, urges this Court for dismissal of the revision petition by upholding the order under challenge.

I have heard learned counsel for the parties and appraised the paper book. A perusal of the written statement, Annexure P-2 revealed that the petitioner-defendant candidly pleaded regarding execution of the agreement to sell dated 6.6.2011 with Amardeep Singh regarding plot measuring 250 sq. yards in Sector 80, Mohali. The trial Court ought to have examined the aforementioned pleadings while entertaining the application for secondary evidence, which has not been presented for the first time in the application (Annexure P-3). The pleadings would remain incomplete in case the evidence sought to be proved by secondary evidence is not permitted but

should have imposed restriction regarding existence as per law, which is mandatory requirement.

In view of such circumstances, the impugned order is set aside and the application for secondary evidence is allowed, subject to the condition that the petitioner-defendant will prove its existence & loss in accordance with law only then it should be considered as secondary evidence. The revision petition is disposed of in the above terms.

(AMIT RAWAL)
JUDGE

February 15, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No