

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

CR No.7902 of 2016

Date of Decision:02.07.2019

HARJINDER SINGH

...Petitioner

Versus

JAGDEV SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Jatinderpal Singh, Advocate
for the petitioner.

Mr. T.P.S.Makkar, Advocate
for respondents No. 1 and 2.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 17.09.2016 passed by Additional Civil Judge, (Sr. Division), Gidderbaha (for short-the Trial Court) vide which the application of the petitioner seeking therein permission to prove the photocopy of the agreement to sell dated 02.12.1994 by way of secondary evidence has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that at an earlier point of time, respondent No.1-Jagdev Singh filed a suit in which the petitioner and proforma respondent No.3-Jaspal Singh were defendants. Through such suit respondent No.1-Jagdev Singh sought permanent injunction from being dispossessed from the land, the details of which were given in his plaint. The petitioner and respondent No.3-Jaspal Singh defended the aforesaid suit

on the ground that they possessed the suit property on the strength of an agreement to sell dated 02.12.1994 executed by Hari Singh-father of Jagdev Singh, through which the property in question had been sold by Hari Singh to petitioner Harjinder Singh and respondent No.3-Jaspal Singh. A copy of the agreement dated 02.12.1994 was produced by the petitioner as Ex.D-2 and the original was produced in Court by Rajinder Singh who had appeared as DW-2. Though, on the basis of the aforesaid agreement dated 02.12.1994, the petitioner and Jaspal Singh/respondent No.3 failed to prove their title over the suit property, respondent-Jagdev Singh was not held entitled for the grant of permanent injunction on the ground that he was a co-sharer in joint possession of the suit property. Thereafter, respondent No.1-Jagdev Singh filed another suit through which he sought possession of the suit property. In such suit, on being put to notice, the petitioner being a defendant in the suit, appeared before the Trial Court and *inter alia* sought to defend such suit also on the basis of the aforesaid agreement to sell dated 02.12.1994, allegedly executed by Hari Singh, father of Jagdev Singh. During the course of leading evidence, the petitioner sought to prove the aforesaid agreement by way of secondary evidence and for that filed an application which has been dismissed through order dated 17.09.2016 which is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

It is not disputed that in an earlier suit between the same parties original copy of the agreement dated 02.12.1994 was produced on behalf of the petitioner and that the same was also perused by the Trial Court. Thus,

there is no dispute with regard to the existence of the original document. The same has now been lost by the petitioner. In the light of the afore facts, the Trial Court should have permitted the petitioner to produce a photocopy of aforesaid agreement by way of secondary evidence and it is so ordered.

Resultantly, the impugned order is set aside and the petition is allowed.

However, it is clarified that mere production of the aforesaid document by way of secondary evidence would not mean that the same has been proved and that the petitioner would be required to prove the same in accordance with law. Meaning thereby, that the evidentiary worth of the aforesaid document would be considered by the Trial Court at the time of final arguments and after going through the entire evidence produced by the parties.

July 02, 2019

Jyoti-IV

(DEEPAK SIBAL)
JUDGE

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