

CR-8626-2015 (O&M)

213

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

CR-8626-2015 (O&M)

Date of decision : 25.03.2019

Chamkaur Singh and others

... Petitioners

Versus

Jai Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Salar, Advocate for
Mr. S.S. Grewal, Advocate
for the petitioners.

Mr. K.B. Raheja, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

CM-11354-C-2018

For the reasons stated in the application, which is supported by an affidavit, the application is allowed and the revision petition is restored to its original number.

MAIN CASE

The present revision petition is directed against the impugned order dated 23.11.2015 (Annexure P-4), whereby the application of the petitioners-defendants for leading secondary evidence regarding two agreements dated 16.02.2010 (Annexure P-5) and 18.02.2010 (Annexure P-6), has been dismissed.

Respondent No.1-plaintiff filed the suit for specific performance of agreement to sell dated 15.05.2006 alleging that the original

CR-8626-2015 (O&M)

agreement was lost. The defendants stated that the first agreement to sell was basically cancelled and torn, resulting into, execution of two agreements, aforementioned, sought to be proved by way of secondary evidence.

Mr. S.S. Salar, learned counsel appearing on behalf of the petitioners submitted that respondent No.1-plaintiff, in order to prove the agreement to sell dated 15.05.2006, was granted permission to prove the same by way of secondary evidence. When the case was slated for defendants' evidence, an application was filed, but the same has erroneously been dismissed on the ground that it was a photocopy of the photocopy, which was not the domain of the trial Court as such findings would have been saved for final adjudication of the suit. The Court below could have allowed the application, subject to the existence and loss and confines the prayer for granting one opportunity, subject to any terms and condition, which this Court may deem fit appropriate. In support of his contention, reliance has been laid to the *ratio decidendi* culled out by this Court in **“Simar Pal Singh V/s Hakam Singh” 2009 SCC OnLine P&H 2502, Mangat Ram V/s Prabhu Dayal and others” 2002 (4) RCR (Civil) 706.**

Per contra, Mr. K.B. Raheja, learned counsel appearing on behalf of respondent No.1-plaintiff submitted that the aforementioned agreement was not confronted to the plaintiff in the cross-examination. It would be a total futile exercise in allowing the application as the suit is already ripen for arguments. It is an attempt to delay the adjudication of the suit, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of

CR-8626-2015 (O&M)

Mr. Salar.

Though I am in agreement with the arguments of Mr. Salar, that the trial Court, at the time of adjudication of the application for secondary evidence, ought not to have expressed the opinion with regard to the photocopy of the photocopy, being not Expert. Be that as it may, in my view, it would not be necessary for granting the permission to the petitioners-defendants to lead evidence qua secondary evidence of agreement to sell dated 16.02.2010, which was confined to, during the course of arguments, as it was not put to the plaintiff. The parameters for entertainment of the prayer are always as per the facts and circumstances of each case.

Keeping in view the aforementioned facts, the impugned order, under challenge, cannot be said to be suffering from illegality and perversity. No ground is made out for interference. Accordingly, the present revision petition is dismissed.

25.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**