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

**Civil Revision No.3601 of 2019
Date of Decision: 29.05.2019**

Sanjeev Kumar Jindal @ Tony

.....Petitioner

Vs

Raksha Devi and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Siddharth Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 03.05.2019 passed by the Civil Judge (Jr. Divn.) Bathinda vide which the application filed by the plaintiffs for permission to lead secondary evidence was allowed.

[2]. Leading of secondary evidence was sought in respect of memorandum of family partition dated 27.03.1996 vide which the plaintiffs have derived their title in the suit property. The aforesaid memorandum is a family partition and the same was in custody of Shivji Ram @ Shiv Chand (deceased). Shivji Ram was living with defendants No.1 and 2 during his last days and the said document was in custody of defendants No.1 and 2.

Defendant No.1 has denied the custody of the said document/family partition. Plaintiff is in possession of the photocopy of the said family partition and the same has been placed on record. In view of denial by defendant No.1, necessity arose to file the application for leading secondary evidence subject to proving existence of the document and the loss thereof. In the plaint the plaintiffs have pleaded that carbon copies of the family settlement dated 27.03.1996 was given to all the five remaining persons.

[3]. On the basis of aforesaid pleadings, an argument was raised by learned counsel for the petitioner that defendants No.4 and 5 can be asked to produce carbon copies of the family partition and thereafter necessary steps be taken by the plaintiffs in accordance with law.

[4]. The aforesaid arguments raised by learned counsel is of no consequence as the photocopy of the document has already been placed on record by the plaintiffs. Even if, an application is moved for production of documents as against defendants No.4 and 5, the case would not go further as the original family partition is claimed to be with defendants No.1 and 2. Since defendants No.1 and 2 have denied the possession of the aforesaid family settlement/partition, therefore, the trial Court in the application for leading secondary

evidence has accepted the prayer subject to strict proof of existence of the family partition and loss of carbon copy. The carbon copy which was in possession of the plaintiffs was lost and thereafter photocopy of the same was produced on record. In both the eventualities, the indulgence has been granted by the trial Court while accepting the prayer subject to proving existence of family partition dated 27.03.1996 and loss of carbon copy of the same by the plaintiffs.

[5]. In **Bipin Shantilal Panchal vs. State of Gujarat, 2001(1) R.C.R. (Criminal) 859**, the Hon'ble Apex Court has laid down a procedure for receiving the documents when the same is objected to during trial. The Hon'ble Apex Court has castigated practice of holding up trial on objections at the time of tendering documents because at that stage directing the Court to pass an appropriate order on objections has been categorized as an '*archaic*' practice. Leading of evidence at that stage would not crystallize any substantial right in favour of the defendants, rather the evidence led by the parties would be tested at the threshold of the admissibility, validity and genuineness of the document at a later appropriate stage.

[6]. In **Ashok Kumar Sachdev vs. Harish Malik, 2007(4) R.C.R. (Civil) 311**, it was held that whether the party ultimately succeeds in proving the document or not is a question of fact

and the same depends upon the evidence of the parties. Grant of leave to lead secondary evidence does not mean that the documents is admitted in evidence, nor it is a finding of existence of any of the conditions indicated under Section 65 of the Indian Evidence Act. It only amounts to holding an inquiry regarding existence of document and its loss under some circumstances. Failure or success of proving existence of documents or its loss cannot be pre-determined that too without providing opportunity to the parties. Whether document is proved or not is to be seen after the leave is granted and the material is produced and the same is evaluated by the Court.

[7]. In **Dr. S.P. Arora vs. Satbir Singh, 2010(5) R.C.R. (Civil) 350** and **Simar Pal Singh vs. Hakam Singh, 2009(14) R.C.R. (Civil) 273**, it was held that offer of secondary evidence can be at best impeached in cross-examination. It is for the Court to examine and decide whether it is appropriate to rely on such secondary evidence or not for the compliance of Section 65 of the Evidence Act. It is always open to the Court to eschew document in case, if the same is not proved to be authentic and admissible. In any case the attempt of a party for production or to exhibit the document cannot be thrown at this stage.

[8]. The arguments of both the parties would be adequately answered by the Court at the time of consideration of issue on

merits. It is equally true that to permit secondary evidence which has been destroyed by the person in whose possession it was or whose it created an enforceable legal right or an obligation is normally not to be allowed as secondary evidence. Secondary evidence of such a nature may be tampered with or changed or it would be against public policy to take chance of running risk of fraud being committed.

[9]. Defendants No.1 and 2 has simply stated that the document is not in their possession, therefore, no such eventuality has crept in the case. The photocopy of the document has already been tendered. The trial Court has granted indulgence to lead secondary evidence subject to proof of existence and loss thereof. The indulgence granted by the trial Court in such a situation cannot be interfered with. This revision petition is found to be totally devoid of merits and is dismissed as such.

May 29, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No