

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

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CR No.529 of 2020

Date of decision : 24.01.2020.

Vishal Khandelwal

... Petitioner

Versus

Vinita Chaudhary and another

.. Respondents

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present:- Ms. Nivedita Sharma, Advocate and
Mr. Shehbaz Thind, Advocate for the petitioner.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the order dated 27.11.2019 passed by the Civil Judge (Junior Division), Gurugram, whereby the application preferred by respondent No.1/plaintiff seeking permission to adduce secondary evidence has been allowed.

Learned counsel for the petitioner/defendant No.2 contends that the petitioner/defendant No.2 had denied the existence of the document and therefore, in terms of Section 65 of the Evidence Act, the application for leading the same through secondary evidence could not have been allowed. She has relied upon the judgment of this Court in the case of ***Banarsi Dass versus Om Parkash and others***, reported as ***AIR 2005 (P&H)200***.

Heard.

The respondent No.1/plaintiff had filed a suit for specific performance wherein it is stated that she had met defendant Nos.1 & 2 through a property dealer with the intention of purchasing second floor of the plot which was to be developed/constructed by defendants No.1 & 2. She had

pleaded that defendant No.2 had informed her that the plot had been purchased by defendants No.1 & 2. Respondent No.1/plaintiff had preferred an application for production of the original Collaboration Agreement dated 15.05.2012 which is stated to have been entered between the petitioner/defendant No.2 and defendant No.1. Defendant No.1 had submitted in his reply that the agreement was executed between him and defendant No.2 and he produced a copy of the agreement and also stated that the original was in custody of defendant No.2. Therefore, as the existence of the collaboration agreement has been admitted by defendant No.1, it has rightly been allowed to be produced as secondary evidence. In the plaint itself, the plaintiff/respondent No.1 had pleaded that as per Collaboration agreement dated 15.05.2001, petitioner/defendant No.1 would construct three floors over the suit property and he would be the sole owner of the same. The plaintiff had agreed to purchase the second floor and paid a sum of ₹4 lacs to defendant No.2. The plaintiff had also filed an application for production of the original agreement. Although the petitioner/defendant No.2 has denied the existence of the collaboration agreement executed between him and defendant No.1 but as the same has been pleaded by the plaintiff and its existence has been admitted by defendant No.1, I do not find any manifest illegality in the impugned order allowing the application for production of the photocopy of the agreement as secondary evidence. The judgment of this Court in the case of **Banarsi Dass(supra)**, is distinguishable on facts from the instant case as in that case, the defendants therein had denied the existence of the original agreement. The application in that case was held to be an afterthought. The photocopy of the agreement was produced in Court and the Court observed that it is a faint print,

it did not have any stamp of notary public or serial number and it was in those circumstances that the Court had upheld the order of the trial Court in dismissing the application for leading secondary evidence.

Consequently, the petition stands dismissed.

January 24, 2020
sonia gugnani

(ANUPINDER SINGH GREWAL)
JUDGE

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