

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

**CR NO. 2595 OF 2020 (O&M)
DATE OF DECISION: 07.12.2020**

Bikram Singh deceased (through LRs)

...Petitioners

Versus

Rachhpal Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Amardeep Singh Gill, Advocate,
for the petitioner.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

1. Petitioner-defendants are aggrieved with order dated 18.02.2020 (Annexure P-11) passed by Civil Judge (Junior Division) (NRI Cases), Jalandhar, allowing an application filed by the respondent-plaintiff under Section 65 of Evidence Act to prove the power of attorney dated 28.08.2015 stated to be executed by Bikram Singh (predecessor-in-interest of defendants) in favour of Harbans Singh, by way of secondary evidence.

2. It is apposite to mention here that a suit was filed by Rachhpal Singh for specific performance of agreement to sell dated 21.09.2015 in respect of 10 kanals of land situated in village Lidhran(Jalandhar). The case set up by the plaintiff is that Bikram Singh(since deceased), who at the relevant time was residing abroad was owner of the said land. He agreed to sell the same to Ranjit Singh, brother of plaintiff, who was also a resident abroad. In lieu thereof it was agreed that Ranjit Singh will give his shop situated at United Kingdom and an amount of Rs.5 lacs in addition thereto. To finalize the deal, Bikram Singh executed power of attorney dated

28.08.2015 in favour of Harbans Singh and on its basis, Harbans Singh entered into agreement to sell the land, *ibid*. Though, as agreed, Bikram Singh took the possession of the shop owned by Ranjit Singh, but he backed out from executing the sale-deed of land in favour of Ranjit Singh. Rachhpal Singh filed the suit and sought specific performance of agreement dated 21.09.2015 or in alternative passing of money decree to the tune of Rs.50 lacs with interest and costs.

3. In the suit, Bikram Singh was arrayed as defendant through his power of attorney Bhagwan Singh. During pendency of the suit Bikram Singh died and present petitioners were impleaded as legal representatives.

4. The suit was contested. Stand of defendants was of total denial with respect of agreement to sell in question and execution of any power of attorney by Bikram Singh in favour Harbans Singh. The parties led their respective evidence. When the case was at rebuttal stage, an application was filed by plaintiff seeking permission to prove the power of attorney stated to be executed by Bikram Singh in favour of Harbans Singh, by way of secondary evidence. Though, the application was contested by the petitioners, tooth and nail, but vide impugned order the trial Court has allowed the same, leading to the filing of instant revision petition.

5. I have heard learned counsel for the petitioners and have gone through the paper book as well as the order dated 18.02.2020, impugned herein.

6. A perusal of pleadings of the suit makes it abundantly clear that from very beginning the case of the plaintiff is that Harbans Singh had entered into agreement to sell dated 21.09.2015 in respect of 10 kanals of land owned by Bikram Singh, on the basis of power of attorney executed by later in favour of Harbans Singh. However, the case of the defendants is of denial qua the same. It has borne out from the records that despite issuance of directions by the trial Court, the defendants clearly denied that they were in possession of any such power of attorney executed by Bikram

Singh in favour of Bhagwan Singh. Whereas, it has come on record that the plaintiff produced a copy thereof which is stated to be duly embossed in the office of Commissioner and recital thereof was duly mentioned in the agreement to sell, which was got registered as well. On this basis, the trial Court concluded that the plaintiff had successfully proved the very existence of power of attorney dated 28.08.2015 and on account of denial by the defendants to be not in possession of any such power of attorney, it was necessary to accord permission to the plaintiff to prove the same by way of secondary evidence, as provided under Section 65 of Evidence Act. Such findings are discernible from a perusal of para No.4 of the impugned order, which reads thus:-

“4. The present application has been filed by the plaintiff to prove the power of attorney dated 28.08.2015 executed by defendant in favour of the plaintiff by way of secondary evidence. Previously also he moved application for production of the documents and it was disposed of by this court on 16.01.2018 by giving directions to the counsel for the defendant to produce the power of attorney in the court on the next date of hearing i.e. 16.02.2018. Ld. Counsel for the defendant gave statement that he is not in possession of the original power of attorney. Thereafter, case proceeded for evidence of both the parties and they have concluded their evidence but now plaintiff wants to prove the said power of attorney in rebuttal. Copy of the said power of attorney has been placed on record by the plaintiff and it is stated to be duly embossed in the office of Commissioner and agreement to sell has also been executed on the basis of said power of attorney and it has been duly mentioned in the said agreement to sell which is registered document. Existence of document is not proved and defendant has already given the statement that he is not in possession of the original document. Both conditions of Section 65 of Evidence Act has been complied with by the plaintiff. There is no other method of to prove the said document. So, the application is hereby allowed subject to proof of loss and existence of document...”

7. In my opinion, the impugned order is based on record, is just and legal. No fault could be found with the approach adopted by the trial Court while allowing the application of the plaintiff. No ground to interfere is made out. Revision petition is dismissed.

DECEMBER 07, 2020
shalini/Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No