

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

207

CR No.5301 of 2019
DATE OF DECISION : 8th NOVEMBER, 2021

Thakur Dawara & another

.... **Petitioners**

Versus

Balvir Kaur & others

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Shamsher Singh Gill, Advocate for the petitioners.

Mr. G. S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for respondents No.1 to 5.

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RAJBIR SEHRAWAT, J. (Oral)

The petitioners have filed this revision petition under Article 227 of the Constitution of India for setting aside order dated 24.07.2019 (Annexure P-7) passed by the Civil Judge (Junior Division), Amloh, whereby their application for leading secondary evidence has been dismissed.

The facts leading to the filing of the present petition are; that the petitioners-plaintiffs filed a suit for declaration of entries in the revenue record in favour of the respondents as null and void, claiming that the petitioners-plaintiffs are the owners in possession of suit property. Amongst other, one of the ground taken by the plaintiffs is that earlier also, the earlier Mahant of the plaintiffs-Thakur Dawara had filed a suit for possession against the predecessors-in-interest of some of the

present respondents. That suit was decreed in favour of the present petitioners-plaintiffs. The said decree was upheld by the appellate court in that case. A regular second appeal No. 3544 of 1985 titled as *Sant Singh & another versus Dev Raj & another*, was also preferred by the defendants of that suit; before this court. However, that regular second appeal (RSA) was also dismissed by the High Court vide order dated 20.12.1985. It is the case of the plaintiffs-petitioners that the certified copy of the said order passed by the High Court in RSA was available with the plaintiffs, however, the same has been lost. But the photocopy of the certified copy of that order passed by the High Court is available with them. An application was earlier moved for leading the additional evidence which was permitted by the trial court vide order dated 07.05.2019. Although, leading of additional evidence was permitted by the trial court, however, when the petitioners sought permission to lead the copy of the above said order of High Court passed in RSA No.3544 of 1985, by way of secondary evidence, the permission to lead secondary evidence has been declined to the petitioners-plaintiffs vide order dated 24.07.2019. It is against that order passed by the trial court that the present petition has been filed.

Arguing the case on behalf of the petitioners, it is submitted by the counsel that proceedings of the regular second appeal, qua which the document is sought to be produced by way of secondary evidence, was between the same parties or their predecessor-in-interest or their immediate family members. Earlier the litigation was with two sons of Gurdial Singh including Sant Singh, who was defendant in the present suit as well. Subsequently, the Patwari, in collusion with LRs of one of

those sons and the other sons of Gurdial Singh, changed the entries in the revenue record in their favour. Hence, the present suit had become necessary and the same was filed against family members of Gurdial Singh. Therefore, the order passed in RSA is relevant for the adjudication of the present suit as well. The counsel has further submitted that the certified copy of the judgments of the Trial court and the appellate court in the earlier proceedings have duly been led in evidence before the trial court. It is only the order passed by this court in the RSA arising from those proceedings which the petitioners are praying to lead in evidence. The certified copy of the judgment/order passed by the High Court is otherwise admissible in evidence *per se*. Earlier the petitioners were having the certified copy of the order of the High Court passed in RSA. However, the same was lost and only photostat copy of the same was left with the petitioners. The petitioners applied to the High Court to get the certified copy again. However, the office of the High Court did not supply the same, rather gave to the petitioners in writing that the record of the said RSA had been destroyed in a fire incident. The writing from the High Court has been submitted to the Trial court in original. Hence, it is submitted that since the original has been destroyed in fire in the office of the High Court and the earlier certified copy has been lost by the petitioners and further, only the photocopy of the certified copy is available with the petitioners, hence the same has been sought to be led in evidence. Since it is copy of a document *per se* admissible in evidence under the Indian Evidence Act, therefore, the same is permissible to be led in evidence as secondary evidence. The counsel has relied upon the judgment of the Supreme

Court rendered in the case of *Marwari Kumhar & others versus Bhagwanpuri Guru Ganeshpuri & another*, 2000(4) RCR (Civil) 279.

Accordingly, it is submitted that the present petition deserves to be allowed and the petitioners deserve to be granted permission to lead the photocopy of the certified copy of the order of the High Court in secondary evidence.

On the other hand, the counsel for the respondents has submitted that the copy sought to be led in evidence by the petitioners is not the copy of the original. It is not the compared copy of the original, rather, is a copy of a compared document. Therefore, the same is not admissible as secondary evidence under Section 63 of the Indian Evidence Act (in short, the Act). Hence, the trial court has rightly declined the same to be led in secondary evidence. The counsel has relied upon judgment of Division Bench of Andhra Pradesh High Court rendered in LPA No.16 of 1999 decided on 16.02.2001, titled as *Badrunnisa Begum versus Mohamooda Begum*. It is further submitted that a perusal of the copy, sought to be produced by the petitioners in secondary evidence, shows that it might not even be the correct copy of the order of the High Court. Therefore, the document itself being suspicious, the same need not be permitted to be led as secondary evidence.

Having heard the counsel for the parties, this court finds substance in the argument of the counsel for the petitioners. It is not in dispute that although the petitioners had closed the oral evidence and the case was adjourned only for documentary evidence. However, at this stage, the petitioners had filed an application for leading additional

evidence in the case. The said application was allowed by the trial court; subject to the petitioner proving the documents to be led in additional evidence in accordance with law. When the petitioners started leading additional evidence they found that the original certified copy is not available with them. Therefore, the photocopy of the original certified copy was sought to be produced as secondary evidence. The said permission to lead secondary evidence has been declined only on the ground that it is not the copy of the original or a copy compared with original. The aspect that the certified copy of a court order is *per se* admissible in evidence has not been taken into consideration by the trial court. The original order of the High Court cannot be moved to any court to be led in evidence by any party. The petitioners could have led in evidence the certified copy of the order of the High Court, however, the record of the High Court has, undisputedly been burnt in fire incident. Hence, it is the certified copy of the order passed by the High Court, if available, that would have acquired the character of the original copy for the purpose of Section 63 of the Act. The photostat copy of the same shall have to be taken as the copy of the original. Hence, the case of the petitioners would also be covered within the scope of Section 63 of the Act. This court finds support from judgment rendered by the Supreme Court in case of *Marwari Kumhar (supra)* on this point; where it has been held that ordinary copy of the certified copy of the court order was admissible in secondary evidence.

Although, the counsel for the respondents has submitted that the photocopy, sought to be produced by the petitioners by way of secondary evidence, does not appear to be even correct copy of the

original order passed by the High Court in regular second appeal, however, this argument is totally irrelevant. Even the trial court, while permitting the petitioners to lead additional evidence, has made it clear that any additional evidence which is to be led by the petitioners would be subject to the fact that they prove the same in accordance with law. Therefore, the petitioners would be under a duty to prove the order, as such, by leading the possible and permissible evidence for that purpose, as per law. Needless to say that mere placing on record document does not, ipso facto, tantamount to the proof of the said document. The stage of proving document would arrive only if the petitioners are granted permission to lead secondary evidence of the document. Once the permission is granted by the court, then the onus would, obviously, be upon the petitioners to prove the same in accordance with law.

In view of the above, finding merit in the present petition, the same is allowed. The order dated 24.07.2019 passed by the Civil Judge (Junior Division), Amloh, is set aside. The petitioners are permitted to lead the photocopy of the certified copy of the order passed by the High Court in RSA No.3544 of 1985 as the secondary evidence, subject to the proof of the same in accordance with law.

8TH NOVEMBER, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>