

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

CR-485-2016 (O&M)

Date of decision: 02.08.2022

Poonam Devi

....Petitioner

Versus

Jagdish Parshad and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate for the petitioner
Mr. S.K.Yadav, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

Defendant No. 1, in a suit for specific performance of the agreement to sell, assails the correctness of the order passed by the trial court on 18th January, 2016, while dismissing his application for permission to lead additional evidence in order to prove agreement dated 19th November, 2009. It is not in dispute that defendant No.1 while filing the written statement has asserted that there was a subsequent agreement dated 19th November, 2009 by which all previous agreements between the parties were cancelled. It was asserted by the petitioner that the aforesaid document was not traceable when she led her evidence and one of the marginal witness namely Sh.Naresh Kumar was confined in jail. The trial court has declined to grant permission on the following grounds:-

1) The document was within the knowledge of the defendant but she never filed an application for permission to lead secondary evidence nor made any effort to prove the same.

2) Defendant has already availed 5 opportunities to lead

evidence but did not produce the aforesaid document.

3) The aforesaid document is witnessed by Sh.Manoj Modi and Sh.Naresh Kumar but no information has been provided regarding Sh.Manoj Modi.

It may be noted here the defendant's evidence was closed on 8th December, 2015, whereas, the application for permission to lead additional evidence was filed on 17th December, 2015 i.e within a period of 9 days.

Heard learned counsel representing the parties at length and with their able assistance perused the paperbook. It is not in dispute that the defendant, while filing the written statement, did assert this fact on 18th July, 2012. The suit is still pending at the trial stage. In the considered view of the Court, the trial court has adopted a very myopic view of the matter. The provision for additional evidence is to permit the party to produce evidence, which could not be produced for various reasons at an appropriate stage. The evidence sought to be produced is a documentary evidence, which is alleged to have been signed by the petitioner as well as defendant no.2. This document, if produced and proved in evidence, would be an important piece of evidence. The petitioner has already asserted that she could not trace the document at the relevant time i.e when she was leading her evidence. One of the marginal witness is stated to be confined in the jail. In these circumstances, it was not expected from the defendant to file an application for permission to lead secondary evidence or examine the

other marginal witness. There is no clarity as to whether Sh. Manoj Modi, still continues to live in the concerned area or not.

Keeping in view the aforesaid facts, the order under challenge is set aside. The application for permission to lead additional evidence shall stand allowed.

The petition stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

02.08.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE