

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-5961 of 2016 (O&M)
Date of decision: 11.11.2022

Roshan Lal

..Petitioner

Versus

Charanjit and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.A.Sheoran, Advocate, for the petitioner.
Mr. Anil Kumar Gahlawat, Advocate, for respondent no.1.
Mr. Ajit Sihag, Advocate, for respondent no.3.
Mr. Vaibhav Sharma, Advocate, for respondent no.4.

ANIL KSHETARPAL, J(Oral)

The petitioner's application for permission to lead secondary evidence in order to prove the alleged agreement to sell dated 23.10.2008 has been dismissed by the court. The petitioner herein, is the plaintiff, in a suit for possession by way of specific performance of the agreement to sell. In his plaint, he relies upon an agreement to sell dated 23.10.2008. The court has dismissed the application on the ground that a photocopy of the agreement to sell cannot be proved by leading secondary evidence.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

After discussing the various provisions of the Civil Procedure Code, 1908, the Indian Evidence Act, 1872 and the High Court Rules and Orders, this court in *Vinod Kumar vs. Satbir Singh (Civil Revision No.2575 of 2020, decided on 03.03.2021)* and *Madan vs. Shankar and others (RSA-327-1989 decided on 01.11.2018)* has held that there is no provision for filing an application for permission to lead secondary evidence. The Bombay

High Court, on 10.11.2017, while deciding Civil Revision application No.82 of 2016, directed the trial courts to stop the practice of requiring applications for permission to lead secondary evidence, particularly when it is not supported by any provision of law. Recently, the Hon'ble Supreme Court in **Dhanpat vs. Sheo Ram, 2020 SCC Online SC 606**, has, also, held on similar lines.

Keeping in view the aforesaid facts, the impugned order passed by the trial Court is set aside, being erroneous. The trial Court is directed to grant the petitioner (the plaintiff) another opportunity to prove the agreement to sell. At the time of final hearing, the Court shall firstly examine 'whether the evidence led is primary or secondary?' If it is found that the evidence led is secondary, then the Court shall further examine 'whether such evidence is admissible as per the parameters laid down in the Indian Evidence Act, 1872?'

Disposed of accordingly.

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

November 11, 2022

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(ANIL KSHETARPAL)
JUDGE

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