

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

CR-5791-2017(O&M)

Date of decision:-5.12.2022

Jagbir Singh Narwal

...Petitioner

Versus

Risal Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Kulvir Narwal, Advocate with
Mr.Satish Kumar, Advocate
for the petitioner.

Mr.Tejas Bansal, Advocate for
Mr.Sanjiv Kumar Aggarwal, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Jagbir Singh Narwal had filed a civil suit for declaration against defendants Risal Singh and another. During the course of those proceedings, the plaintiff filed an application under Sections 65, 66 and 74 of the Indian Evidence Act seeking permission to adduce secondary evidence in respect of registered sale deeds bearing No.4563 dated 15.1.1960, 2563/1 dated 2.9.1969 and 4564 dated 26.2.1960 pertaining to land/plots situated in the revenue estate of Para, Tehsil and District Rohtak stating therein that plaintiff had summoned Sh.OP Rana to produce the registered sale deed No.4563/1 dated 15.1.1960, which was in favour of his mother as she purchased land in revenue estate of village Para, Tehsil and District Rohtak from Sh.Umed Singh; mother of Sh.OP Rana had sold the plot to Sh.Ram

Mehar vide registered sale deed No.2363/1 dated 2.9.1969; Ram Mehar was summoned along with that sale deed in original but as per report he had expired on 5.7.2007; son of Sh.Ram Mehar had appeared and stated that original sale deeds were lost, therefore, he could not produce the same; furthermore Ramu Hooda was summoned for producing sale deed No.4564/1 dated 26.2.1960 since his father had purchased land from Umed Singh in the same revenue estate but the original sale deed was lost during floods. Therefore, for proving the said registered documents, the plaintiff had obtained certified copies from the revenue authorities and wanted to lead secondary evidence. Learned counsel for the plaintiff had referred to various judgments praying that his application be accepted.

2. Opposition to the application came from the side of defendants, who contended that neither the plaintiff had pleaded those sale deeds in his pleadings nor any issue in that regard had been struck by the Court, therefore, permission to lead secondary evidence could not be granted; although the witnesses were examined by the plaintiff but those were not relevant; sale deed pertaining to the year 1969 had no effect regarding the value of the property. Therefore, the application be dismissed.

3. The trial Court vide the impugned order date 19.8.2017 had dismissed the application. For ready reference, the operative para of the order runs as under:

Provision of Section 65 of the act provides for permitting the parties to lead secondary evidence. However, such a course is subject to large no. of limitations. Undoubtedly, the loss

of original has been stated by these witnesses which is sufficient if submitted on record by way of affidavit. Here, plaintiff wants to produce these sale deeds so as to show that the documents pertain to their adjoining land and also to assist the Court in drawing the analogy qua the value paid in that sale deed. It was a registered document so a registered clerk who is already mentioned in the list of witness can obviously come on record with his register so as to clarify the names of the parties and the land related to that document. This would be enough to show the value as well as the location so there is no requirement to exhibit those sale deeds when there is no dispute about their execution. Mere loss of a document does not give a reason to allow secondary evidence unless it is proved that the said documents are important for decision of the matter. Those sale deeds have neither been pleaded nor carry any substantive value for decision of the matter. Therefore, application stands dismissed. Now, to come up on 23.8.2017 for Pws. Only formal witnesses who need to be summoned will be examined on that date. Dasti be given if desired.

4. The said order left the plaintiff aggrieved and he has filed the present revision petition.

5. I have heard learned counsel for the revisionist and I find the impugned order to be quite detailed and well reasoned, based upon proper appraisal and analysis of the factual and legal position.

6. As regards the authorities referred to by learned counsel for the revisionist i.e. ***Amarjeet Kaur Versus Raghbir Singh and others***

passed by a Co-ordinate Bench of this Court in CR No.4889 of 2013 decided on 16.8.2013 and ***Asha Rani and others Versus Inderjit Sharma and others*** passed by a Co-ordinate Bench of this Court in CR No.2714 of 2014 decided on 21.4.2014, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

7. Here the trial Court has not committed any wrong in dismissing the application. The trial Court was justified in passing the impugned order and I do not see any reason to take a different view in the matter and to upset the order by accepting the revision petition.

8. Thus, the petition is doomed for failure and is dismissed accordingly.

5.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No