

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

CR-735-2020 (O&M)

Date of decision: 08.09.2022

Kulbushan

...Petitioner

Versus

Bhupinder Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S.Thind, Advocate for the petitioner

Mr. Aditya Dassaur, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

An application filed by the plaintiff, for permission to lead secondary evidence, in order to prove the agreement to sell, has been dismissed by the trial court. The correctness of the order thereof has been challenged before this Court.

After noticing that there is no provision for seeking prior permission of the court to lead the secondary evidence, the Bombay High Court in Civil Revision Application no.82 of 2016 has condemned such a practice and this Court in '**Vinod Kumar vs. Satbir Singh**' CR-2575-2020 decided on 03.03.2021, '**Madan vs. Shankar and others**' RSA-327-1989 decided on 01.11.2018 and the Hon'ble Supreme Court in '**Dhanpat vs. Sheo Ram**' 2020 SCC online SC 606, has held that the party to the suit cannot be debarred from leading secondary evidence and the court after the evidence is led by the party, would examine, "As to whether such evidence is primary or secondary?" At that stage, if the court finds that the evidence led is the secondary evidence, the court will examine as to whether the parameters as laid down under Section 63

read with Section 65 of the Indian Evidence Act, 1872 have been met with or not?

Keeping in view the aforesaid facts, the revision petition is disposed of while directing the trial court to permit the plaintiff to lead the secondary evidence.

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

08.09.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE