

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-6714 of 2018(O&M)  
Date of decision:15.07.2022

Vijay Kumar

...Petitioner

Versus

Sham Lal (deceased) through LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:** Mr. Naveen Batra, Advocate,  
for the petitioner.

Mr. Rajeev Kawatra, Advocate,  
for the respondents.

**ANIL KSHETARPAL, J (Oral)**

The plaintiff's application for leading secondary evidence, of a supplementary agreement by way of a separate writing, has been dismissed by the courts below. He has filed a suit for possession by way of specific performance of the agreement to sell, on 27.08.2007. In the plaint itself, the plaintiff has asserted that there is a supplementary agreement signed by both the parties on 27.08.2007. The trial Court has dismissed the application on the ground that the plaintiff has failed to prove its existence. Such observation has been made without granting an opportunity to the plaintiff to prove the same. This finding can be arrived at only if the plaintiff has been permitted to lead evidence.

In the considered opinion of the court, the argument of the learned counsel suffers from a fundamental error. There is no provision either under the Code of Civil Procedure, 1908, the Indian Evidence Act,

1872, or under the High Courts Rules and Orders which provides mandatorily seeking the prior permission of the Court to lead secondary evidence. Recently, the Supreme Court, the Bombay High Court as well the jurisdictional Court have held that there is no provision that mandates the filing of an application in advance for seeking the permission of the Court to lead secondary evidence. In fact, the Bombay High Court, after noticing that a wrong practice has developed in the courts, has made strong observations directing the trial Courts not to insist upon filing of such applications as such practice is not supported by law. Reference in this regard can be made to the judgment passed in **Vinod vs. Satbir (Civil Revision No.2575 of 2020, decided on 03.03.2021)** in which this Court has followed **Madan vs. Shankar and others** (RSA-327-1989 decided on 01.11.2018), **Dhanpat vs. Sheo Ram 2020 SCC online SC 606** and in **Civil Revision Application no.82 of 2016 decided on 10.11.2017** by the Bombay High Court.

As per the provisions of the Indian Evidence Act, 1872, there are two types of evidence, namely, primary and secondary evidence. The Court, after considering the evidence which has been led, can decide whether the evidence, so led, is primary or secondary. If the court comes to the conclusion that the evidence led is secondary, the court shall, thereafter, decide as to whether the party leading secondary evidence has fulfilled the parameters laid down in law with regard to its admissibility.

In view thereof, the revision petition is disposed of.

The plaintiff shall be permitted to lead evidence in accordance with law.

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

July 15, 2022  
nt

(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No