

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

**CIVIL REVISION No.1881 of 2022 (O&M)
DATE OF DECISION : 12.05.2022**

Charanjeet Singh

.....Petitioner

versus

Shree Uttam Chand Jagdish Lal Charity Trust & Ors.

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramender Chauhan, Advocate for the petitioner

ALKA SARIN, J. (Oral):

This is a revision petition under Article 227 of the Constitution of India impugning the order dated 06.04.2022 passed by the Addl. Civil Judge (Junior Division), Bhiwani whereby the application for secondary evidence filed by the plaintiff-petitioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for possession by way of specific performance of agreement to sell dated 04.09.1992. The suit was instituted in the year 2016. During the pendency of the suit, defendant-respondent No.1 filed an application for directing the plaintiff-petitioner to produce the original agreement to sell. However, the agreement to sell was not produced by the plaintiff-petitioner, rather a statement was made on 09.05.2016 that the original agreement to sell dated 04.09.1992 was not traceable and that he

would produce the same as and when the same would be traced. Thereafter, the present application was filed for directing the defendant-respondents to produce the original of the agreement to sell and in case of failure to do so the plaintiff-petitioner be permitted to lead secondary evidence. In the application it was stated that during the pendency of the suit, on 16.12.2017, a written compromise was entered into between the parties and as per the compromise the plaintiff-petitioner gave the original agreement to sell to the defendant-respondents and the same was never returned to the plaintiff-petitioner nor the same had been placed on the file.

Learned counsel for the plaintiff-petitioner would contend that the agreement to sell, in view of the compromise dated 16.12.2017, was handed over to the defendant-respondents who neither produced it on the record nor returned the same to the plaintiff-petitioner and hence now the plaintiff-petitioner has filed the application for production of the document by the defendant-respondents and, in the alternative, he be allowed to lead secondary evidence qua the agreement to sell 04.09.1992.

Heard.

A conjoint reading of the impugned order and the application reveals that earlier an application was filed by the defendant-respondents for directing the plaintiff-petitioner to produce the original agreement to sell. The plaintiff-petitioner did not produce the agreement to sell and rather gave a statement on 09.05.2016 that the original agreement to sell dated 04.09.1992 was not traceable and that he would produce the same as and when the same would be traced. Thereafter, from 2016 to 2022, there was complete silence. The application has now been moved wherein it has

been stated that an alleged compromise took place in the year 2017 and as a part of the compromise the agreement to sell was handed over to the defendant-respondent No.1. The application itself is totally bereft of any details as to when the agreement to sell dated 04.09.1992 was traced by the plaintiff-petitioner and as to why the same was not produced as and when it was traced. Further, the application is also totally silent as to why the plaintiff-petitioner chose to keep quiet from 2017 till 2022 and no application was filed for production of the document or for leading of secondary evidence. The story as put forth by the plaintiff-petitioner that the original agreement to sell was given to the defendant-respondents in the year 2017 does not inspire confidence.

Section 65 of the Indian Evidence Act, 1872 reads as under:

“65. Cases in which secondary evidence relating to documents may be given - Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:

(a) When the original is shown or appears to be in the possession or power -

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”

A perusal of the above-reproduced provision reveals that when it appears that the original is in the possession or power of the person against whom the document is sought to be proved and the person concerned does not produce it in such a case secondary evidence would be admissible. In the present case, admittedly, an application was earlier moved by the defendant-respondents for production of the same very document. A statement was then made by the plaintiff-petitioner on 09.05.2016 that the agreement to sell was not traceable and as and when it was traced the same would be produced on the record. The story as set up in the application is totally belied by the events as described above. No case is made out by the plaintiff-petitioner for permitting him to lead secondary evidence.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Court below. The revision petition is accordingly dismissed. Pending applications, if any, stand disposed off accordingly.

12.05.2022
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
