

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

128

CR-1937-2022

Date of decision: 16.05.2022

Rajinder Singh (Kataria)

.....Petitioner

Versus

Ashok Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Parminder Walia, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been filed under Article 227 of the Constitution of India with a prayer to set aside the order dated 23.02.2022 (Annexure P-4) passed by learned Civil Judge (Sr. Divn.), Karnal vide which the application of the plaintiffs (respondents herein) for secondary evidence under Section 65 of the Indian Evidence Act, 1872 (for short, 'the Act') was allowed.

Learned counsel for the petitioner *inter alia* contends that the trial Court in breach of the settled principles of law erroneously allowed the application filed by the respondents for leading secondary evidence vide the impugned order (Annexure P-4). He submits that agreement to sell dated 26.06.2017 and the endorsement dated 17.12.2017 were in fact false and fabricated documents and hence, not admissible in evidence. The respondents wanted to place the photocopies of these false and fabricated documents on record which was not permissible under law as only certified copies could be adduced by way of secondary evidence.

I have heard learned counsel and perused the relevant material on record including the impugned order.

It is a settled law that documents are required to be proved

by leading primary evidence. However, Section 65 of the Act provides for some exceptions to this general rule. It would be relevant to reproduce Section 65 of the Act, which reads thus:-

"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."

In the absence of primary evidence, secondary evidence may be led to prove the existence, condition or contents of documents.

Section 63 of the Act defines secondary evidence as under:-

"63. Secondary evidence.—Secondary evidence means and includes—(1) *Certified copies given under the provisions hereinafter contained;*

(2) *Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;*

(3) *Copies made from or compared with the original;*

(4) *Counterparts of documents as against the parties who did not execute them;*

(5) *Oral accounts of the contents of a document given by some person who has himself seen it.*

Illustrations

(a) *A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.*

(b) *A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.*

(c) *A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.*

(d) *Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original."*

Before proceeding further, it would be relevant to observe here that if a party is intending to lead secondary evidence it must bring forth the facts as to why it is unable to lead primary evidence.

Adverting to the case in hand, it is the pleaded case of the respondents/plaintiffs that the original agreement to sell dated 26.06.2017 was destroyed on the request of none other than the defendant (petitioner herein). It has been further averred by the respondents/plaintiffs in the plaint that they had in their possession an attested copy of the agreement to sell which had been destroyed by the petitioner/defendant and receipt thereof.

A perusal of Sub-Section (3) of Section 63 of the Act

which has been reproduced hereinabove leaves no manner of doubt that even photocopies made from or compared with the original can be adduced as secondary evidence of a document.

Whether the copies are false and fabricated, would be a matter of trial. The petitioner shall get ample opportunity to challenge the genuineness and authenticity as well as probative value of these documents during trial.

Hence, in the aforementioned circumstances when the original documents have been destroyed, this Court finds no reason to not allow the respondents to lead secondary evidence qua the same and more so, when the documents are duly attested photocopies and also compared by the notary public.

The submissions made by the learned counsel for the petitioner that only certified copies can be adduced by way of secondary evidence are bereft of any merit.

Before parting it would also be relevant to point out here that mere admission of secondary evidence would not amount to proof of a document. The existence and genuineness of a document must be established during trial and before such secondary evidence is relied upon, the trial Court would definitely record reasons for placing reliance upon the same.

As a sequel to the above, finding no merit in the instant revision petition, the same is hereby dismissed.

16.05.2022

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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