

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

135

**CR-1980-2022
Decided on : 18.05.2022**

Purushotam Dass

... Petitioner(s)

Versus

Sher Singh and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Sushil Jain, Advocate
for the petitioner(s).

MANJARI NEHRU KAUL, J. (Oral)

The instant revision petition has been filed under Article 227 of the Constitution of India, for setting aside of the order dated 20.04.2022 (Annexure P-10), passed by the learned Civil Judge (Sr. Divn.), Rewari, vide which the application filed by the petitioner/defendant for leading secondary evidence under Section 65 of the Indian Evidence Act, 1872 (for brevity 'the Act'), was dismissed.

Learned counsel for the petitioner *inter alia* submits that the impugned order dated 20.04.2022 (Annexure P-10) suffers from patent illegality, as it contravenes to the provisions of Section 65 of the Act. Learned counsel submits that the petitioner was allotted the suit land out of the surplus pool, by the competent authority and a certificate of allotment i.e. 'Form US-3', was also issued in his favour on 28.05.1979 (Annexure P-1). He further submits that mutation *qua* the suit land was sanctioned in favour of the petitioner and thereafter, the possession was duly handed-over to him. The factum of the delivery of possession to him stands duly recorded vide Rapat No. 28, dated 09.09.1979 in the Roznamcha of the year 1979-80. Therefore, Rapat No. 28 is a material document to substantiate the

claim of the petitioner. In order to prove this document, the petitioner summoned Halqa Patwari to produce the Roznamcha of the year 1979-80, however, while deposing as DW-1, the Halqa Patwari deposed that since the Roznamcha for the year 1979-80 was not in his office, but in the office of the Deputy Commissioner, he was unable to produce it before the Court.

Learned counsel further submits that it was in this background, after the Halqa Patwari had been examined as DW-1, an application was moved by the petitioner before the Record Keeper of the office of the Deputy Commissioner to provide him a certified copy of the Roznamcha of the year 1979-80. However, the application was rejected with a report that only photocopy of the Roznamcha was there on the file, which did not bear signatures of any competent officer. This report was duly corroborated by the Record Keeper of the Deputy Commissioner's office while stepping into the witness-box as DW-5 (Annexure P-7).

Learned counsel still further submits that on a perusal of the depositions of both DW-1/Halqa Patwari and DW-5/Record Keeper, D.C. Office, coupled with the report given on the application for obtaining a certified copy, it stands established that the petitioner was unable to produce the original document for reasons beyond his control, which were not attributable to him. Learned counsel, thus, prays that as per the provisions of Section 65 of the Act, the petitioner should be permitted to lead secondary evidence *qua* Rapat No. 28, dated 09.09.1979, recorded in Roznamcha for the year 1979-80. In support of his submissions, learned counsel has placed reliance upon the various judgments of the Hon'ble Apex Court as well as of this Court rendered in *H. Siddiqui (D) By Lrs. vs. A. Ramalingam, 2011(4) SCC 240; Rakesh Mohindra vs. Anita Beri and*

others, 2015(4) RCR (Civil) 1023; Jaspal Singh Tiwana and another vs. Mohinder Singh Sandhu and others, 2018(1) PLR 206 and Punjab State Warehousing Corporation vs. B.K. Chadha, 2021(1) CivCC 590.

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

As a general rule, the parties must prove documents by leading primary evidence except, of course, in cases covered by Section 65 of the Act. It would be apposite to reproduce Section 65 of the Act, which reads as follows:-

“ 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 instant case, the document sought to be proved is a Roznamcha, which is a document maintained by the revenue officials, therefore, the original of this document could have been produced only by the officials concerned. The halqa Patwari while stepping into the witness-box deposed that the Roznamcha is not in his office, but is kept in the office of Deputy Commissioner and when he enquired about it from the Deputy Commissioner's office, the officials there denied being in possession of the same. A perusal of the report (Annexure P-6) and the deposition of DW-5 (Annexure P-7) further reveals that the original document is not available and only the photocopy of the same is available on record, which admittedly does not bear the signatures of any competent officer.

In the circumstances, when the original document could not be produced due to its non-availability in the official records, this Court concurs with the submissions made by learned counsel that it was for reasons beyond the control of the petitioner that the primary evidence of the document could not be adduced. However, the petitioner is seeking to prove the said document by adducing a photocopy of the photocopy of the original in the form of secondary evidence, therefore, in this regard, it

would be relevant to reproduce Section 63 of the Act, which defines secondary evidence, as follows:-

“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.”*

A minute reading of Sub-Section 2 of Section 63 of the Act provides that secondary evidence would include copies made from the original by a mechanical process and the copies compared with such copies. However, a conjoint reading of Section 63(2) of the Act and illustration '(b)' to Section 63 of the Act, makes it clear that before a copy compared with

the copies of the original, can be adduced as secondary evidence, the party adducing such secondary evidence shall have to show that the copy, whose copy is sought to be adduced in evidence, was in fact, made from the original. Unless and until, there is any such endorsement on the copy or there is something else to suggest that such copy was made from the original, the copy of a copy purportedly made from the original would not meet the requirements of Section 63 of the Act, and would not be thus treated as secondary evidence.

The Hon'ble Apex Court in ***H. Siddiqui's case*** (*supra*) held that secondary evidence must be authenticated by foundational evidence to the effect that the alleged copy is, in fact, a true copy of the original.

Adverting to the case in hand, there is nothing to suggest that the photocopy available in the records of the office of the Deputy Commissioner, was ever made or compared with the original. It would be relevant to reproduce the cross-examination of DW-5 i.e. the Record Keeper of DC office:-

"It is correct that photocopy of the said proceedings is in our record. It is also correct that Ex-DW1/7 doesn't bear the signatures of any judicial officer. It is correct that I didn't get the photocopy of Mark 'A' done, rather it was done by advocate representing the defendant. I have seen both the documents in which there is a minute difference that on their copy R-1 circle was there whereas there was no circle in the file. I don't have any personal knowledge of Mark 'A'. I have come only with the record. The knowledge regarding whether the said document is correct or not, only the officials or employees can tell about this, who had prepared it. The original of Mark 'A' is neither seen by me in our file nor in the court. I can tell whether the Mark 'A' is as per original or not, after seeing the original one. A Photostat copy which was presented as Mark 'A' is on the file and Photostat of the same is on our file. We don't have the original. I can't tell about the correctness/authenticity of the

contents of the documents.”

It is clear from the perusal of the cross-examination of DW-5 that even mark 'A' in the judicial file is a photocopy of the original filed by an Advocate, which does not even bear the signatures of a Judicial Officer. In the circumstances, there is nothing to even remotely suggest that the photocopy available on record was ever made from the original. The petitioner has thus failed to authenticate the copy available in records by any foundational evidence that it was in fact a true copy of the original.

This Court has thus no hesitation in observing that a photocopy of such a copy (alleged to have been made from the original) would not fall within the ambit of 'secondary evidence'. The case laws relied upon by the learned counsel for the petitioner would not come to his rescue, as none of them deal with a photocopy of a photocopy, which was not proved to have been made from the original.

As a sequel to the above, the impugned order dated 20.04.2022 (Annexure P-10) does not warrant any interference. Resultantly, the revision petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

May 18, 2022

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No