

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4030 of 2019 (O&M)

Date of Decision: 20.09.2022

Sarla Devi

... Petitioner(s)

Versus

Dalip and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gurjot Sandhrao, Advocate
for the petitioner(s).

Mr. Rajinder Partap Singh Jammu, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The petitioner herein is a defendant in the plaintiff's suit for possession by way of specific performance of the agreement to sell and in the alternative, for recovery of the amount.

2. The defendant, while contesting the suit, claims that the amount has already been paid to the plaintiffs. During the pendency of the suit, an application, filed by the defendant for permission to lead the secondary evidence in order to prove a photocopy of the writing Ex.D1, has been dismissed by the trial Court on the ground that such writing is not a part of the written statement.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The defendant, while filing the written statement, has contested the suit. As per Order VI Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), the pleadings are required to be confined to material facts and that too in a concise form. It is also provided that the evidence is not required to be made a part of the pleadings by the parties.

The alleged writing is a piece of documentary evidence. Hence, the aforesaid

document is not required to be made a part of the pleadings.

5. In any case, the attention of the Court has not been drawn to any provision for filing an application for permission to lead secondary evidence. It would be noted here that there is no provision either in the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act” or in CPC or in the High Court Rules and Orders for seeking prior permission of the Court to lead secondary evidence. The evidence can be primary or secondary. The practice to file an application for seeking prior permission to lead secondary evidence is not supported by any statutory provision. In *Vinod Kumar v. Satbir Singh (Civil Revision No. 2575 of 2020, decided on 03.03.2021, Madan vs. Shankar and Others (Regular Second Appeal No. 327 of 1989, decided on 01.11.2018), Dhanpat vs. Sheo Ram 2020 SCOnline SC 606* and in *Civil Revision Application No.82 of 2016 decided on 10.11.2017 by the Bombay High Court*, this aspect has been dealt with, in detail.

6. Keeping in view the aforesaid facts, the revision petition is allowed and the order dated 01.04.2019 is set aside. Let the petitioner produce his evidence. The trial Court, while deciding the case, shall examine as to whether the evidence, so led, is primary or secondary? If the trial Court comes to the conclusion that the evidence, so led, is secondary, then, the Court shall examine “Whether the defendant has fulfilled the requirements of Section 65 of the 1872 Act or not?”

(Anil Kshetarpal)
Judge

September 20, 2022
“DK”

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