

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.3757 of 2018 (O&M)
Date of Order:18.12.2023

Om Parkash

.Petitioner

Versus

Gyanwati and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajeet Pal Singh Pakka, Advocate
for Mr. Rao Ajender Singh, Advocate
for the petitioner.

Mr. Gopal Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. An application filed by the petitioner for permission to prove the agreement to sell by leading secondary evidence has been dismissed by the trial court on the ground that the permission can be granted only if the existence of the document is proved.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

3. After discussing the various provisions of the Civil Procedure Code, 1908, the Indian Evidence Act, 1872 and the High Court Rules and Orders, this court in **Vinod Kumar vs. Satbir Singh (Civil Revision No.2575 of 2020, decided on 03.03.2021)** and **Madan vs. Shankar and others (RSA-327-1989 decided on 01.11.2018)** has held that there is no provision that mandates filing an application for permission to lead secondary evidence. The Bombay High Court, on 10.11.2017, while deciding the Civil Revision application No.82 of 2016, directed the trial courts to stop the practice of

requiring the applications for permission to lead secondary evidence, particularly when it is not enshrined in any provision of law. Recently, the Hon'ble Supreme Court in *Dhanpat vs. Sheo Ram, 2020 SCC Online SC 606*, has, also, held on similar lines.

4. Keeping in view the aforesaid facts, the impugned order being erroneous is set aside. The trial Court is directed to grant the petitioner (the plaintiff) an opportunity to prove the agreement to sell. At the time of final hearing, the Court shall firstly examine 'whether the evidence led is primary or secondary?' If it is found that the evidence led is secondary, then the Court shall further examine 'whether such evidence is admissible as per the parameters laid down in the Indian Evidence Act, 1872?'

5. The revision petition is allowed.

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

December 18, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO