

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

2023:PHHC:130826

CR-6884-2018

Date of decision: 09.10.2023

GANDA SINGH

..Petitioner

Versus

AMAR SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Thatai, Advocate
for the petitioner.

Mr. Sardavinder Goyal, Advocate
for respondent (through video conferencing).

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is the defendant in a pending suit filed by the plaintiff (respondent herein) for grant of decree of permanent injunction. In the written statement filed by the petitioner, an agreement dated 26.07.2006 has been relied upon by him. He filed an application for permission to prove the same by way of secondary evidence. The trial Court dismissed the same. The correctness of the aforesaid order has been challenged in this revision petition.

2. In fact, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, this Court in *Madan vs. Shankar and others (Regular Second Appeal No.327 of 1989, decided on 01.11.2018)*, came to a conclusion that there is no provision which mandates the filing of an application for permission to lead secondary evidence, in order to lead secondary evidence.

3. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being

filed under a misconception and it has now become an epidemic. Even the

Supreme Court in *Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606* has made observations in this regard.

4. In *Vinod Kumar vs. Satbir Singh (Civil Revision No.2575 of 2020, decided on 03.03.2021)*, this Court has held as under:-

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. The learned counsel representing the respondent submits that in *Dhanpat’s case (supra)*, the Supreme Court observed that if an application has been filed, the same will have to be decided.

7. This Court has considered the submissions.

8. As already noticed, not only this Court, even Bombay High Court and Supreme Court have consistently held that there is no provision for filing an application for permission to lead secondary evidence under Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as the ‘1872 Act’). This view has been taken in more than 50 revision petitions, which have been decided. There is no occasion to deviate from the aforesaid view particularly when the learned counsel representing the respondent has

failed to draw the attention of the Court to any provision requiring filing of an application under Section 65 of the 1872 Act.

9. Keeping in view facts and discussion, the revision petition is allowed. The impugned order passed by the trial Court on 04.09.2018 is set aside the petitioner shall be permitted to lead evidence. Subsequently, the Court will decide the admissibility of the secondary evidence while deciding the suit. At that stage, the Court will be entitled to evaluate “Whether the petitioner has fulfilled the requirement of Section 65 of the 1872 Act or not?”

10. With these observations, the revision petition is disposed of.

11. Needless to observe that the observations made by this Court or by the trial Court while passing the impugned order shall not be construed as final expression on the merits of the case.

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

October 09th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*