

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.207

Case No. : C. R. No. 1668 of 2020

Date of Decision : November 20, 2023

Savita

.... Petitioner

vs.

Om Parkash and another

.... Respondents

**CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.**

\* \* \*

Present : Mr. Navmohit Singh, Advocate  
for the petitioner.

Mr. Nitin Jain, Advocate  
and Mr. Ayush Gupta, Advocate  
for the respondents.

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**GURBIR SINGH, J. :**

1. Challenge in this revision petition is to the order dated 07.02.2020 (Annexure P-1), passed by learned Civil Judge (Senior Division), Hisar (hereinafter referred to as – the Trial Court), whereby application of plaintiffs/respondents for leading secondary evidence of agreement to sell has been allowed.

2. Brief facts, as culled out from the petition, are that the plaintiffs/respondents filed a suit for possession by way of specific performance of the agreement to sell dated 28.12.2015, entered into by the defendant/petitioner with plaintiffs/respondents, regarding land measuring 14 kanals 05 marlas, situated at Village Arya Nagar, Tehsil and District Hisar and for permanent injunction restraining the defendant/petitioner from

transferring or alienating the suit land in any manner.

3. During pendency of the case, the plaintiffs/respondents moved application for grant of permission to lead secondary evidence of the agreement to sell dated 28.12.2015, entered into between the parties. It was submitted therein that the original agreement was handed over by the plaintiffs/respondents to the defendant/petitioner on 06.07.2016 but the same was not returned to them by the defendant/petitioner in spite of various oral requests. It was further submitted that photocopy of the agreement to sell was also prepared by the plaintiffs/respondents and the said facts were mentioned by the plaintiffs/respondents in para no.5 of the plaint. The defendant/petitioner filed reply to the application. The application was allowed by the learned Trial Court vide impugned order dated 07.02.2020.

4. Learned counsel for the petitioner submits that there was no pleading in the plaint that the copy produced was the true and correct copy of the original and said copy has been generated out by the mechanical process from the original. The photostat copy might be result of manipulation. The photocopy is neither a primary evidence nor secondary. A party is required to prove when and where the photocopy was taken. It is not the case of the plaintiffs/respondents that any report was lodged with the police, when the photocopy was lost. So, the application for secondary evidence was liable to be rejected.

5. I have heard learned counsel for the parties and perused the case file.

6. The learned Trial Court in its order dated 07.02.2020 has

specifically held that allowing secondary evidence of the agreement to sell would aid the Court in deciding the dispute and mere taking on record the said agreement or exhibiting the same would not amount to the sanctity of documents nor it would amount to the evidentiary value of the documents. Both the matters would be decided only at the stage of final arguments. The onus of loss of the document in question would have to be discharged by the plaintiffs.

7. A Co-ordinate Bench of this Court, in **Ashok Kumar vs. Sudesh Rani and another** – **CR-8166-2018**, decided on 21.07.2023, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, has held that there is no provision for filing an application for permission to lead secondary evidence. The relevant extract of the said judgment reads as under :-

*“4. 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 **RSA-327-1989**, titled as **“Madan Lal Vs. Shankar and others”**, decided on **01.11.2018**, came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence.*

*5. 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 misconception, which has now attained provisions of an epidemic. Even the Supreme Court in **Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC***

online SC 606 made observations in this regard.

6. In Civil Revision No.2575 of 2020, titled as “Vinod Kumar Vs. Satbir Singh”, 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.”*

8. Thus, a party cannot be denied opportunity to lead relevant evidence and after recording of the evidence, the Trial Court, while finally deciding the case, would be entitled to evaluate such evidence and whether the plaintiffs have successfully proved the existence, validity or genuineness of the agreement to sell in question, by way of secondary evidence.

9. Since the Court below has already held that the plaintiffs/respondents are allowed to lead secondary evidence, subject to proof of existence, loss and also proof of said document, I do not find any ground to

interfere in the impugned order passed by the learned Trial Court.

10. In view of the above, this revision petition is found to be without any merit and the same is accordingly dismissed.

11. Pending applications, if any, shall stand disposed of along with this judgment.

November 20, 2023  
monika

(GURBIR SINGH)  
JUDGE

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|-----------------------------|------|
| Whether speaking/reasoned ? | Yes. |
| Whether reportable ?        | Yes. |