

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

143

2023:PHHC:105597

CR-1666-2020 (O&M)

Date of decision: 16.08.2023

ASHOK KUMAR AND ANOTHER

..Petitioners

Versus

ANJU GARG AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate
with Mr. Arshnoor, Advocate
for the petitioner.

Mr. Ravish Bansal, Advocate
for respondent No.1.

Mr. Nirbhay Garg, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein, is the defendant in the pending suit. By an interlocutory order passed by the trial Court, permission to lead secondary evidence has been allowed.

2. The learned counsel representing the parties are ad idem that there was no necessity to file an application for permission 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, which have now become 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.

4. 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.”

5. They submit that the plaintiff shall be permitted to lead secondary evidence and the Court while finally deciding the suit shall examine “whether the plaintiff has fulfilled the parameters of Section 65 of the Indian Evidence Act, 1872?”

6. With these observations, the present petition is disposed of.

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

August 16th, 2023

Ay

**(ANIL KSHETARPAL)
JUDGE**

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