

CR-4123 of 2019 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4123 of 2019 (O&M)
Reserved on: 14.11.2023
Pronounced on: 13.12.2023

Hazara Singh

.....Petitioner

Versus

Sukhwinder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Sachin Sharma, Advocate,
for the petitioner.

Mr. K.S. Sidhu, Sr. Advocate, with
Mr. G.S. Benipal, Advocate,
Mr. Praagbir S. Dhindsa, Advocate, and
Mr. Kartik Bansal, Advocate,
for respondents No.2 to 4.

NAMIT KUMAR, J.

1. This revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the order dated 18.05.2019 (Annexure P-1) passed by the Court of learned Civil Judge (Junior Division), Dera Bassi, whereby application filed by the petitioner to prove agreement to sell dated 15.03.2004 by way of leading secondary evidence, has been dismissed.

2. Brief facts leading to the filing of the present revision petition are that petitioner-plaintiff filed a suit for possession by way of

specific performance on the basis of written agreement of sale dated
RAVINDER SINGH 2023.12.14 15:27
I attest to the accuracy and
integrity of this order/judgment

CR-4123 of 2019 (O&M)

15.03.2004 as well as agreement of sale of full and final payment dated 21.06.2004, pleading therein that respondent No.1 had entered into a written agreement to sale dated 15.03.2004 with the petitioner-plaintiff regarding land measuring 18 biswas comprised in Khewat/Khata No.181/356 Khasra No.836/1 (0-18) situated within the revenue estate of village Rampur Sainia, Tehsil Dera Bassi, District S.A.S. Nagar (Mohali) for a total consideration of Rs.3 lacs and an amount of Rs.50,000/- was paid to respondent-defendant No.1 at the time of entering into abovesaid agreement and remaining amount of sale consideration was also paid to defendant No.1 subsequently vide different writings as executed on the backside of the written agreement of sale dated 15.03.2004 and the said payment of Rs.3 lacs was made by the petitioner to respondent No.1 through cheques duly issued by him out of his account No.08311100000514 maintained by the petitioner in the Punjab and Sind Bank Branch, Dera Bassi. It is further pleaded that subsequently, on demand raised by respondent No.1, in addition to Rs.3 lacs already paid, petitioner paid Rs.1 lac more to respondent No.1 and agreement of sale of full and final payment was executed on 21.06.2004 mentioning therein that respondent-defendant No.1 had received the total sale consideration amounting to Rs.4 lacs from the petitioner-plaintiff and nothing is due towards him and petitioner can get the sale deed executed and registered in his favour at any point of time; further for declaration to the effect that sale deed bearing Vasika No.6826 dated 26.11.2008 executed by respondent-defendant No.3 being the alleged GPA of respondent No.1-Sukhwinder

CR-4123 of 2019 (O&M)

Kaur in favour of respondent-defendant No.2-Sukhbir Singh qua the suit property is illegal, null and void and is liable to be set aside being a result of fraud played upon by the defendants in collusion with each other upon the plaintiff. Petitioner-plaintiff also prayed for restraining respondent No.2 from further alienating, transferring or encumbering the suit property by way of sale, gift or mortgage etc. or in any other manner changing the nature of the suit property by illegally and unlawfully raising any construction in the same.

3. Learned counsel for the petitioner contended that the trial Court has wrongly dismissed the application of the petitioner for proving the agreement of sale dated 15.03.2004 by way of leading secondary evidence. He further contended that original agreement of sale is not traceable and the document is very much necessary for adjudication of the controversy properly. He further contended that petitioner could not file the application for leading secondary evidence earlier due to lack of knowledge. He further contended that in case the application of the petitioner is not allowed, he will suffer irreparable loss and injury. In support of his contentions learned counsel placed reliance on the judgments of this Court in ***Smt. Shobha Rani v. Ravi Kumar, 1999(1) R.C.R.(Civil) 98*** and ***Rajesh Yadav and others v. Balbir Singh and others, 2014(5) R.C.R.(Civil) 941***.

4. On the other hand, learned Senior counsel for respondents No.2 to 4 supported the impugned order. He contended that Photostat copy of a document cannot be received as secondary evidence. He further contended that petitioner failed to prove as to how he procured

CR-4123 of 2019 (O&M)

the photocopy of the document in question. In support of his contentions he placed reliance on the judgment of the Hon'ble Supreme Court in ***Smt. Yashoda v. Smt. K. Shobha Rani, 2007(2) R.C.R.(Civil) 840***; judgments of this Court in ***Mangat Ram v. Prabhu Dayal and others, Law Finder Doc id # 2314***; ***Major Singh and others v. Kulwinder Kaur and others, Law Finder Doc id # 441800*** and judgment of Madhya Pradesh High Court in ***Haji Mohd. Islam and another v. Asgar Ali and another, Law Finder Doc id # 123598***.

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

6. It would be relevant to reproduce Sections 63 and 65(a) of the Evidence Act, which read as under: -

"63 : Secondary evidence - Secondary evidence means and includes -

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

65. Cases in which secondary evidence relating to documents may be given – Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power- of the person against whom the

document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it."

7. In **Smt. J. Yashoda's** case (supra), the Hon'ble Supreme Court has observed as under: -

"9. The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. [Section 65](#) deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under [Section 64](#), documents are to be provided by primary evidence. [Section 65](#), however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section. In [Ashok Dulichand v. Madahavlal Dube and Another](#) [1975(4) SCC 664], it was inter alia held as follows:

"After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of [Section 65](#) of Indian

Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in [Section 66](#) such person does not produce it. Clauses (b) to (g) of [Section 65](#) specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of [Section 65](#), the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed Photostat copy. Prayer was also made by the appellant that in case respondent no. 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however, nowhere stated in the affidavit that the original document of which the Photostat copy had been filed by the appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate the original document was in the possession of respondent no.1. The appellant further failed to explain as to what were the circumstances under which the Photostat copy was

prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the Photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court."

The admitted facts in the present case are that the original was with one P. Srinibas Rao. Only when conditions of Section prescribed in [Section 65](#) are satisfied, documents can be admitted as secondary evidence. In the instant case clause (a) of [Section 65](#) has not been satisfied. Therefore, the High Court's order does not suffer from any infirmity to warrant interference."

8. In the present case, petitioner have failed to explain as to what were the circumstances under which the photocopy of the document was prepared and who was in possession of the original document at the time its photograph was taken. Moreover, defendants had moved application on 09.03.2015 for directing the plaintiff to produce the agreement to sell dated 15.03.2004 in original before the Court and plaintiff had suffered the statement that the said agreement has been lost by him. Petitioner-plaintiff has moved the present application at a belated stage as an afterthought.

CR-4123 of 2019 (O&M)

9. No benefit of the judgments relied upon by learned counsel for the petitioner can be given to him as the same are distinguishable from the facts of the present case.

10. The impugned order passed by the trial Court is well-reasoned and does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

12. Interim order dated 08.07.2019 passed by this Court stands vacated.

13.12.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No