

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

Civil Revision No. 4216 of 2023(O&M)

Date of Decision: 28.07.2023

Surinder Kumar Aggarwal & Anr.

...Petitioners

Versus

Naresh Aggarwal & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Ravish Bansal, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners/ defendants No.3 and 4 to challenge order dated 25.04.2023 (Annexure P-7) passed by the Court of learned Civil Judge(Jr.Divn.), SAS Nagar, whereby an application filed by respondent No.1/ plaintiff under Section 65 of the Evidence Act to direct the defendants to produce original agreement to sell dated 30.09.2016 executed by Labh Singh (deceased) in favour of plaintiff and defendant No.5 Surinder Kumar Aggarwal, registered transfer deed bearing Vasika No. 3704 dated 20.02.2015, registered sale deed bearing Vasika No. 4183 dated 30.09.2016, transfer deed bearing Vasika No. 958 dated 15.05.2017, transfer deed dated 05.07.2017 bearing Vasika No. 1991 and sale deed dated 05.07.2017 bearing Vasika No. 1990 and in alternative the plaintiff be allowed to prove the aforesaid documents by way of secondary evidence, has been allowed and plaintiff is given permission to prove the abovesaid documents by leading secondary evidence.

2. At the outset, the counsel for the petitioners submits that except for agreement to sell dated 30.09.2016 all the other documents are registered documents and the petitioners are having no objection if the respondent No.1/

plaintiff has been allowed to prove the said registered documents by way of secondary evidence. However, the counsel for the petitioners while raising objection with regard to proving of agreement to sell dated 30.09.2016 by way of secondary evidence, submits that the said agreement to sell is stated to have been executed by Labh Singh in favour of respondent No.1/ plaintiff with regard to sale of some immovable property. At the time of execution of the said document, the original agreement must have been handed over to respondent No.1/ plaintiff and as such he should produce the original agreement in Court. Counsel for the petitioners further submits that it is not the case of the petitioners that original agreement has been lost or is in custody of someone else. The counsel for the petitioner further submits that the original agreement to sell is not in custody of petitioner No.1 and even otherwise the execution of the same is not admitted. That, thus, as per provisions of Section 65 of Evidence Act the respondent No.1 has to firstly prove its existence and its loss and only thereafter could seek permission to prove the said document by way of secondary evidence. So, prayer is made that the impugned order be set aside to the extent stated above.

3. I have considered the submissions made by counsel for the petitioners.

4. As far as registered transfer deed bearing Vasika No. 3704 dated 20.02.2015, registered sale deed bearing Vasika No. 4183 dated 30.09.2016, transfer deed bearing Vasika No. 958 dated 15.05.2017, transfer deed dated 05.07.2017 bearing Vasika No. 1991 and sale deed dated 05.07.2015 bearing Vasika No. 1990 are concerned, admittedly they are registered documents and as such there is no difficulty of getting them proved by way of secondary evidence by plaintiff/ respondent No.1. To this extent, there is no illegality in the impugned order.

5. As per plaintiff/ respondent No.1 the agreement to sell dated 30.09.2016 was executed by Labh Singh in favour of plaintiff and defendant No.5 Surinder Kumar Aggarwal. So, the original agreement to sell be either in custody of plaintiff or defendant No.5. Notice for production of said document was issued by the plaintiff to the defendants including defendant No.5, who denied its custody. In the given circumstances, the application with regard to permission to prove the said agreement by way of secondary evidence is covered under Section 65(c) of Evidence Act and the plaintiff can be allowed to lead secondary evidence with regard to said agreement to sell subject to proof of its existence and loss. While passing the impugned order, the learned trial Court failed to take into consideration these legal requirements.

6. In the light of the above, the impugned order whereby permission has been given to the respondent No.1/ plaintiff to prove agreement to sell dated 30.09.2016 by way of secondary evidence is set aside and the learned trial Court is directed to decide the application with regard to permission to lead secondary evidence in context of agreement to sell, in the light of the provisions of Section 65(c) of Evidence Act.

7. The petition stands disposed of in aforesaid terms. The petitioners are directed to appear before the learned trial Court on 04.09.2023. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

28.07.2023

Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No