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

**C.R NO.2817 OF 2021 (O&M)
DATE OF DECISION : 24.05.2023**

Sandeep Khosla

...Petitioner

Versus

Parveen Khosla and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vaibhav Sehgal, Advocate,
For the petitioner.

Mr. Rajiv Bhatia, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is to set-aside impugned order dated 18.08.2021 (Annexure P-5) passed by learned Civil Judge (Junior Division), Ludhiana, whereby in a suit instituted by respondent/plaintiff for declaration and permanent injunction, application filed by petitioner/defendant under Section 65 of the Indian Evidence Act for leading secondary evidence by producing photocopy of a Will, was dismissed.

2. Plaintiff/respondent herein has filed a suit for declaration before the Court below to the effect that suit property, is a Joint Hindu Family property and plaintiffs and defendant are co-owners in possession of 1/3rd share each. Transfer deed dated 27.11.2009 allegedly executed by late Surinder Nath Khosla in favour of defendant

is illegal, null and void. Further consequential prayer has been made seeking permanent injunction as well.

3. Learned counsel for respondent opposes the petition on the ground that photocopy of Will per se is not admissible. It cannot, therefore, be allowed to be produced in secondary evidence. Qua the said proposition, learned counsel for petitioner is in agreement in law, but states that at the time of filing the application before learned Court below to produce secondary evidence, certified copy of original was not available, however, now the same has since been made available and he will produce the certified copy and not a photocopy.

4. In support of his contentions, learned counsel for the petitioner relies on an order passed by a Coordinate Bench of this Court in CR-7787-2016 decided on 22.11.2022 titled ***M/s Ansal Properties & Infrastructure Ltd. and another Vs. State of Haryana and others***, which is reproduced herein below:

“An application filed by the plaintiffs for permission to lead secondary evidence has been dismissed by the trial Court on the ground that the application can be entertained only when the existence, execution and loss of the documents is proved by the party desirous of leading secondary evidence. The plaintiffs wishes to lead secondary evidence in order to prove the collaboration agreement (22.10.1992), supplementary collaboration agreement (22.10.1997) and second supplementary agreement (27.07.2012), power of attorney (22.09.1997) executed by plaintiff no.2 in favour of plaintiff no.1 as also power of attorney (03.01.2008) executed by plaintiff no.1 in favour of Sh. N.K.Sehgal.

“This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

*After discussing the various provisions of the Civil Procedure Code, 1908, the Indian Evidence Act, 1872 and the High Court Rules and Orders, this court in **Vinod Kumar vs. Satbir Singh** (Civil Revision No.2575 of 2020,*

decided on 03.03.2021) and Madan vs. Shankar and others(RSA- 327-1989 decided on 01.11.2018) has held that there is no particular provision for filing an application for permission to lead the secondary evidence in any of the procedural law. The Bombay High Court, on 10.11.2017, while deciding Civil Revision application No.82 of 2016, directed the trial courts to stop the practice of requiring applications for permission to lead secondary evidence, particularly when it is not supported by any provision of law. Recently, the Hon'ble Supreme Court in Dhanpat vs. Sheo Ram, 2020 SCC Online SC 606, has also, held on the similar lines.

Keeping in view the aforesaid facts, the impugned order passed by the trial Court is set aside, being erroneous. The petition stands allowed. The trial Court is directed to grant the petitioners (the plaintiffs) another opportunity to prove the aforementioned documents. At the time of final hearing, the Court shall firstly examine 'whether the evidence led is primary or secondary?' If it is found that the evidence led is secondary, then the Court shall further examine 'whether such evidence is admissible as per the parameters laid down under Section 65 in the Indian Evidence Act, 1872?'

Disposed of accordingly.

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

5. I am in respectful agreement with the views expressed herein above. In the premise, revision petition is allowed. Learned trial Court shall accord opportunity to petitioner/defendant to adduce secondary evidence in terms of the judgment, *ibid* by relying on certified copy of Will. Needless to say that at the time of final hearing, the learned Trial Court shall examine whether or not the same is admissible as per parameters under Section 65 of the Indian Evidence Act.

6. Pending application(s), if any, shall also stand disposed of.

MAY 24, 2023
Shalini

(ARUN MONGA)
JUDGE

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