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

CR-4897-2023

Date of Decision:- 18.10.2023

BHARPUR KAUR@ BHURI KAUR

...Petitioner

Vs.

AMRIK SINGH AND ANOTHER

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Harvinder Singh Maan, Advocate for the petitioner.
Mr. Ankush Singla, Advocate for the respondent No.1.
Mr. H.S. Sidhu, Advocate for respondent No.2.

AMARJOT BHATTI, J. (Oral)

1. The petitioner – Bharpur Kaur @ Bhuri Kaur has filed civil revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 03.07.2023, Annexure P-3, passed by learned Additional Civil Judge, Budhlada, District Mansa in case titled as Amrik Singh Vs. Bharpur Kaur whereby the application for secondary evidence dated 16.01.2023, Annexure P-1, filed by the plaintiff/respondent No.1 has been allowed arbitrarily and illegally.

2. Learned counsel for the petitioner/defendant No.1 argued that the plaintiff filed application for leading secondary evidence for

examination of Joint Sub Registrar, Bareilly to establish his presence marked through application dated 19.11.2018. It was alleged that original application was lost by the plaintiff and he has a photocopy of the same and now by filing this application he wanted to examine a witness to prove the fact that the plaintiff got his presence marked on that particular day. It is argued that the application is not maintainable. The existence of alleged document must be proved on record. In the absence of existence of such document, the prayer for secondary evidence is liable to be declined. The application filed by the plaintiff is Annexure P-1. The reply submitted by the petitioner/defendant No.1 is Annexure P-2. The learned trial Court, without appreciating the factual position, has allowed the application by passing impugned order dated 03.07.2023 which is Annexure P-3. In support of his arguments, he has relied upon the authority cited in **2017 (4) PLR 446 of Coordinate Bench in a case titled as Hira Singh and Anr. Vs. Ajit Singh** where it was explained in Para No. 13 of the judgment that the pre-conditions for leading secondary evidence are that such original documents could not be produced by the party relied upon such documents inspite of best efforts but unable to produce the same, which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of preliminary evidence unless it is established that the original document is lost or destroyed or being deliberately withheld by the party in respect of that document sought to be used as secondary evidence in respect of that document cannot be accepted. He has relied upon the authority of Hon'ble Supreme Court of India cited in **2007 (2) RCR (Civil) 840 in a case titled as Smt. J. Yashoda Vs. Smt. K. Shobha Rani** where it was explained in Para No. 7

and onwards that “secondary evidence as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove to be valid, the same party is not entitled to introduce secondary evidence of its contents. Secondly, the secondary evidence is an evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given.” It is argued that in the case in hand, the respondent No.1/plaintiff is relying upon a photostat copy of application to establish the fact that he was present in the office of Naib Tehsildar and got his presence marked by filing application dated 19.11.2018. Without considering the nature of document which is required to be proved by way of secondary evidence, the application has been wrongly and arbitrarily allowed by passing impugned order dated 03.07.2023. It is prayed that the aforesaid order may kindly be set aside by accepting the present revision petition.

3. On the other hand, the learned counsel for the respondents referred to para No.4 of the impugned order dated 03.07.2023 where the learned Additional Civil Judge (Sr. Divn.), Budhlada has passed the order holding that the applicant is allowed to lead evidence regarding the said document subject to proof of existence of the original as well as loss of the original, the objection was kept open which was to be decided at the time of conclusion of the case and accordingly the application was allowed subject to proof of loss and existence of original document. It is argued that the aforesaid order passed by learned Additional Civil Judge (Sr. Divn.), Budhlada does not suffer from any illegality or irregularity. The onus is still on the plaintiff/respondent No.1 to lead evidence to establish

that the plaintiff got his presence marked in the office of Naib Tehsildar by filing application dated 19.11.2018. The said evidence is to be weighed later-on at the time of final adjudication of the case. Therefore, the impugned order passed by learned Additional Civil Judge (Sr. Divn.), Budhlada does not require any interference and the Civil Revision preferred by the petitioner/defendant No.1 may kindly be dismissed.

4. I have considered the arguments advanced before me. I have also gone through the record. Amrik Singh plaintiff filed suit for specific performance directing the defendants to get the sale deed registered regarding the land as detailed in the plaint on the basis of agreement to sell dated 14.08.2018 and in the alternate suit for recovery of Rs.46,32,190/- as detailed in the plaint. It is matter of record that during the pendency of the case the plaintiff filed application for summoning and examining Surinder Pal, Naib Tehsildar, Bareta to prove one application given by the plaintiff to him as Joint Sub Registrar, Bareta dated 19.11.2018 vide which his presence was marked in his office. The said application is Annexure P-1 and copy of reply is Annexure P-2. The petitioner/defendant No.1 has challenged the impugned order dated 03.07.2023 vide which the plaintiff has been allowed to lead secondary evidence regarding application dated 19.11.2018 allegedly filed by him before Naib Tehsildar, Bareta subject to the existence and loss of the original. Section 65 of the Indian Evidence Act, 1872 deals with the cases in which secondary evidence relating to documents may be given. It is explained that secondary evidence may be given of the existence, condition or contents of a document in the manner as detailed in sub Clause- 'a' to 'g'. The relevant Clause 'c' runs as under:-

“(c). When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;”

It is further explained that in this eventuality any secondary evidence of the contents of the document is admissible. In the case in hand, the respondent No.1/ plaintiff wants to prove the application filed by him in the Office of Naib Tehsildar, Bareta to get his presence marked. As per his version, the application dated 19.11.2018 has been lost, therefore, the application was filed to examine Surinder Pal, Naib Tehsildar for proving the said document. The learned Trial Court while disposing of this application concluded that applicant can lead evidence subject to the existence and loss of the original document. The objection regarding that evidence was kept open which shall be decided at the time of conclusion of the case. In my opinion, the learned Additional Civil Judge (Sr. Divn.), Budhlada has not committed any illegality or irregularity by allowing the application vide order dated 03.07.2023. In case any document is lost the onus is still on the party who alleges its existence and loss and at the same time it is for that party to prove the same. The other party i.e. the present petitioner/defendant No.1 will get full opportunity to cross-examine the said witness and the admissibility of the said evidence is to be seen at the time of final adjudication of the case. Therefore, with this observation, I do not find any reason to interfere in the impugned order dated 03.07.2023 and the same is accordingly upheld and the Civil Revision preferred by the present petitioner/defendant No.1 is accordingly declined.

Pending application (s), if any, also stands disposed of.

18.10.2023

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(AMARJOT BHATTI)
JUDGE

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