

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-5295-2023

Date of Decision: 21.9.2023

Lala Ram (since deceased)

....Petitioner

VERSUS

Vir Parkash and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Sandeep Kumar Yadav, Advocate,
for the petitioner.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioner/defendant No.2C against the order dated 27.7.2023 passed by the Court of Additional Civil Judge, Senior Division, Mohindergarh in a civil suit titled Vir Parkash v. Smt. Chhota Devi and others whereby an application filed by the petitioner to prove extension agreements dated 2.7.2015 and 11.9.2015 by way of secondary evidence, has been dismissed.

2. Counsel for the petitioner, while assailing the impugned order, submits that the plaintiff-respondent No.1-Vir Parkash, has filed suit for specific performance of agreement to sell dated 26.9.2013 executed by respondent No.2-Chhota Devi in his favour. Said suit was contested by respondent No.2-Chhota Devi as well as legal heirs of respondent No.3-Lala Ram which also include the petitioner. It is further submitted that the petitioner filed written statement wherein also, he placed reliance upon said extension agreements dated 2.7.2015 and 11.9.2015 which were executed by respondent No.2-Chhota Devi in favour of the petitioner and Om

Parkash. He further submits that the original of both the agreements were handed over to aforesaid Om Parkash but they were later on lost and misplaced by said Om Parkash who reported the matter to the police and report bearing application No.132330471900413 dated 7.3.2019 was registered by the police in this regard. Counsel for the petitioner further submits that as the original of the aforesaid extension agreements are lost, the petitioner moved an application to prove both the said documents by way of secondary evidence. However, the said application was dismissed by the learned trial Court vide impugned order dated 27.7.2023.

3. Counsel for the petitioner, while referring to the provisions of Section 65 of Evidence Act, submits that in the instant case, the original documents have been lost and as such, the petitioner is having no other option but to prove the extension agreements by way of secondary evidence. In support of his contentions, counsel for the petitioner referred to decision of Hon'ble Supreme Court in **Rakesh Mohindra v. Anita Beri and others;** 2015 (4) RCR (Civil) 1023. Counsel for the petitioner, while placing reliance upon the judgment of Coordinate Bench of this Court in **Darshan Lal v. Gurmail Singh and others;** 2018(3) PLR 181, further submits that Section 65 of Evidence Act does not envisage filing of any application for leading secondary evidence and the evidentiary value of such secondary evidence would be considered by the Court at the time of ultimate decision of the case.

4. I have considered the submissions made by the counsel for the petitioner.

5. In the instant case, the petitioner intends to prove extension agreements dated 2.7.2015 and 11.9.2015 by way of secondary evidence on

the ground that originals of the same which were in custody of co-vendee Om Parkash were misplaced and to this effect, report was lodged with the police on 7.3.2019. Hon'ble Apex Court in **Dhanpat v. Sheo Ram**; (2020) SCC Online SC 606 has held that as per terms of Section 65(c) of the Evidence Act, there is no requirement to file an application for seeking permission of the Court to lead secondary evidence.

6. Further, in the instant case, the petitioner from the very beginning, has placed reliance upon extension agreements dated 2.7.2015 and 11.9.2015 which are now stated to have been lost. So, in the present case, factual foundation has been laid by the petitioner for leading secondary evidence. Further, the learned trial Court while finally deciding the suit, will be entitled to evaluate such evidence and decide whether the petitioner has successfully proved its existence, loss, validity and genuineness by way of secondary evidence.

7. Furthermore, in the instant case, as per the petitioner, original of extension agreements dated 2.7.2015 and 11.9.2015 which are stated to have been lost, were in custody of co-vendee Om Parkash. So, firstly, notice is required to be issued to said Om Parkash with direction to produce original of extension agreements dated 2.7.2015 and 11.9.2015 before the learned trial Court and in case, he produces any document in order to show that original of the concerned documents are lost, then the learned trial Court is to proceed further in the matter in accordance with the provisions of Section 65 of the Evidence Act. Further, while passing the impugned order, the learned trial Court has not taken into consideration the plea taken by respondent No.2-Chhota Devi with regard to execution of the aforesaid extension agreements. It is also settled position of law that the application

for secondary evidence can be allowed subject to proof of existence of original and loss thereof.

8. In view of above discussion, this Court is of the view that impugned order dated 27.7.2023 cannot be sustained and consequently, the same is hereby set aside. Learned trial Court is directed to decide the application filed by the petitioner to lead secondary evidence, afresh, in light of settled position of law, as has been discussed above, after giving opportunity of hearing to the parties concerned. The petitioner is directed to appear before the learned trial Court on the date already fixed in the said Court.

9. Present revision petition has been disposed of without issuing notice to respondent No.1 and in case, he is not satisfied with this order, liberty is granted to him to approach this Court for recall of this order.

(KARAMJIT SINGH)
JUDGE

September 21, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No