

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.114

Case No. : C. R. No. 7670 of 2023

Date of Decision : December 19, 2023

Juhruddin (deceased) through LRs Petitioners

vs.

Iqbal and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Sachin Mittal, Advocate
and Mr. Akshat Mittal, Advocate
for the petitioners.

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 16.09.2023 (Annexure P-1), passed by learned Additional Civil Judge (Senior Division), Ferozepur Jhirka, District Mewat (hereinafter referred to as – the Trial Court), whereby application filed by the respondents/plaintiffs, seeking permission to prove the agreement to sell dated 29.08.2014 by leading secondary evidence, has been allowed.

2. Brief facts, as culled out from the petition, are that the plaintiffs/respondents filed a suit for specific performance of the agreement to sell dated 29.08.2014, entered into by the defendants/petitioners with plaintiffs/respondents.

3. During pendency of the case, the plaintiffs/respondents moved application for grant of permission to lead secondary evidence of the

agreement to sell dated 29.08.2014, entered into between the parties. It was submitted therein by the plaintiffs/respondents that on 16.07.2016, during their visit to the Court Complex, Ferozepur Jhirka, they lost the original agreement. DDR was also registered regarding this loss. It was further pleaded in the application that the true and correct photocopy of the agreement was in the possession of the plaintiffs/respondents and they intended to prove the aforesaid agreement to sell by way of secondary evidence. The defendants/petitioners filed reply to the application. The application was allowed by the learned Trial Court vide impugned order dated 16.09.2023.

4. Learned counsel for the petitioner submits that the plaintiffs/respondents are trying to rely upon a forged document. Neither the existence nor the loss of the alleged agreement to sell is proved in the present case. The DDR lodged with the police does not even relate to the plaintiffs/respondents. Rather, it pertains to some offence allegedly committed by one Yashpal etc. under Sections 148, 149, 323, 324, 506 IPC. The target date in the agreement to sell has also been changed by the plaintiffs/respondents so as to bring the suit within limitation. Otherwise, the suit is also barred by limitation. So, the learned Trial Court has erred in allowing the application primarily on the ground of existence of document being not in dispute. So, the application for secondary evidence was liable to be rejected.

5. I have heard learned counsel for the petitioners and perused the case file.

6. The learned Trial Court has passed a detailed order dated

16.09.2023, wherein pleadings of both the parties and case law cited by them have been considered. Provisions of Section 65 of the Indian Evidence Act have also been discussed. It is clear therefrom that allowing secondary evidence of the agreement to sell would aid the Court in deciding the dispute. The onus of loss of the document in question would have to be discharged by the plaintiffs/respondents.

7. A Co-ordinate Bench of this Court, in **Ashok Kumar vs. Sudesh Rani and another – CR-8166-2018**, decided on 21.07.2023, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, has held that there is no provision for filing an application for permission to lead secondary evidence. The relevant extract of the said judgment reads as under :-

*“4. In fact, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, this Court in **RSA-327-1989, titled as “Madan Lal Vs. Shankar and others”, decided on 01.11.2018**, came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence.*

*5. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being filed under misconception, which has now attained provisions of an epidemic. Even the Supreme Court in **Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606** made observations in this regard.*

*6. In **Civil Revision No.2575 of 2020**,*

titled as “Vinod Kumar Vs. Satbir Singh”,
decided on 03.03.2021, this Court has held as
under :-

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

8. Thus, a party cannot be denied opportunity to lead relevant evidence. If no application is filed to lead secondary evidence of document, even then the Court is duty bound to record evidence. The party leading such evidence is to prove existence and loss of original document. If photocopy is proved by way of secondary evidence, then Court is required to give finding if it is copy of original and to satisfy itself that possibility of tampering with the document is ruled out. After recording of the evidence, the Trial Court, while finally deciding the case, would certainly evaluate such evidence as to whether the plaintiffs/respondents have successfully proved the existence, validity or genuineness of the agreement to sell in

question, by way of secondary evidence.

9. Since the learned Trial Court has already held that the plaintiffs/ respondents are allowed to lead secondary evidence, so, the plaintiffs/respondents are entitled to prove the agreement to sell by way of leading secondary evidence and also to prove its existence and loss. Since photocopy is being proved by way of secondary evidence, so, the Court must satisfy at the time of final hearing that it is not tampered with.

10. In view of the above findings, this revision petition is found to be without any merit and the same is accordingly dismissed.

11. Pending applications, if any, shall stand disposed of along with this judgment.

December 19, 2023
monika

(GURBIR SINGH)
JUDGE

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