

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

CR-6195-2022 (O&M)

Date of decision: 16.01.2023

Raobarinder Singh

...Petitioner

Versus

Gopal Kaur and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. S.S. Majithia, Advocate for the petitioner.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Raobarinder Singh had brought a suit for specific performance of agreement to sell dt. 17.01.2013 with respect to land measuring 8 kanals situated at Village Chatiwind, Tehsil & District Amritsar against defendants Gopal Kaur, widow and Sucha Singh son of Darbara Singh.

2. On getting notice of the suit, the defendants appeared and filed written statement, contesting the suit. Issues on merits were framed and trial in the case started. During course of proceedings, the defendants filed an application for permission to lead secondary evidence with regard to agreement dt. 17.01.2013 executed by the defendants in favour of plaintiff Raobarinder Singh available on the Court file as Mark 'A'. According to the defendants, the agreement, on the basis of which the plaintiff has filed the suit, is forged and

fabricated because defendants had not executed any such agreement. The defendants had served a notice under Order 12 Rule 8 CPC upon the plaintiff through their counsel for production of the original agreement in question dt. 17.01.2013 but the plaintiff refused to do so, stating that he had not executed the agreement. Alleging that the original document is in custody of plaintiff, which he is not intentionally producing, the defendants had filed an application under Section 65 of the Indian Evidence Act seeking permission to lead secondary evidence.

3. The application was resisted by the plaintiff contending that the requisite condition for leading secondary evidence of a document in terms of Section 65 of the Indian Evidence Act are not fulfilled in this case. As a matter of fact, the document sought to be got produced from the plaintiff is not in existence and it was never executed by the plaintiff. Therefore, application be dismissed.

4. The application was, however, allowed by the trial Court of Civil Judge (Jr. Divn.) Amritsar, vide order dt. 21.11.2022. The operative part of the order runs as follows:-

“Heard. The applicants/defendants want to prove an agreement dated 17.01.2013 by way of secondary evidence. The applicants have submitted that the original of the said agreement is in possession of the plaintiff. As per Section 65(a) of the Indian Evidence Act, 1872 secondary evidence of a document which is in the possession of the opposite party can be allowed to be given if that person after notice does not produce the said document. The applicants had earlier moved

an application under Order 12 Rule 8 CPC for giving an intimation to the court that notice has been duly given to the plaintiff for production of the said agreement. The plaintiff had replied to that application and had in the reply admitted that he had received notice. The defence of the defendants hinges around the agreement dated 17.01.2013 and copy of the said agreement has been placed on file as Mark A by the applicants/defendants. Existence of agreement to sell Mark A is prima facie established from the document Mark A itself. The applicants/defendants have alleged that in fact on the back of agreement Mark A, receiving of Rs. 5 lacs earnest money is mentioned. Therefore, I am of the view that the agreement Mark A is vital to the defendants and the defendants must be allowed to prove the same through secondary evidence. Whether the said agreement was actually entered into or not as a question which will be decided later on. At this stage, it is necessary to give an opportunity to the applicants/defendants to prove the said document by giving secondary evidence. Therefore, the application stands allowed. One opportunity is given to the applicants/defendants to prove the agreement Mark A through secondary evidence.”

5. This order left the plaintiff aggrieved and he has approached this Court by way of filing the present revision petition, contending that the same be accepted; the impugned order be set aside and the application in question be dismissed.

6. I have heard learned counsel for the revision petitioner besides going through the record.

7. The impugned order is quite detailed and well reasoned. It does not have any element of arbitrariness or perversity. The trial Court

has simply granted permission to the defendants to lead secondary evidence of agreement dt. 17.01.2013. The admissibility of that document is yet to be decided. The plaintiff would be given an opportunity to cross-examine the witnesses produced by the defendants to prove the agreement in question. The trial Court has just accepted the request of defendants to lead evidence of the document in question and has not made any observation with regard to the admissibility of the document and legal weightage to be given to the same. The plaintiff is getting aggrieved unnecessarily. There is no ground to interfere with the impugned order by exercising revisional jurisdiction. The revision petition is found to be without merit and is dismissed accordingly.

16.01.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No