

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

CR-6227-2022(O&M)

Date of decision:-4.1.2023

Charanjit Singh

...Petitioner

Versus

Shree Uttam Chand Jagdish Lal Trust and others

...Respondents

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

Present: Mr.Vaibhav Jain, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Under challenge in this revision petition is order dated 25.11.2022 passed by the Court of Civil Judge (Jr.Divn.), Bhiwani in civil suit titled “Charanjit Versus Shree Uttam Chand Jagdish Lal Trust”, vide which application filed by plaintiff Charanjit, who is revision petitioner before this Court, for proving agreement to sell dated 4.9.1992 by way of secondary evidence was dismissed.

2. Briefly stated, facts of the case are that plaintiff Charanjit Singh had filed a suit for specific performance of agreement to sell dated 4.9.1992 against defendants Shree Uttam Chand Jagdish Lal Charity Trust and others contending that defendant No.1 trust through its President Sh.Narayan Dass Khurana had entered into such agreement to sell with the plaintiff regarding the suit property measuring 950 square yards on payment of Rs.2,50,000/-, receiving the entire consideration amount; as Sh.Narayan Dass Khurana had expired on 2.12.1992, his legal heirs and

trustees of defendant No.1 firm kept assuring the plaintiff that they would get the sale deed executed and registered in his favour but they did not do so; ultimately, the plaintiff was compelled to file the suit in question.

3. On getting notice, the defendants appeared and filed written statement contesting the suit. Issues on merits were framed.

4. During the course of proceedings, the plaintiff had filed an application for directing defendant No.1 trust to produce the original agreement to sell dated 4.9.1992 and in the alternative to allow him to lead secondary evidence to prove the document for the reason that defendant No.1 during the pendency of the suit had entered into an agreement dated 16.12.2017 with the plaintiff, in terms of which defendant No.1 had to execute the sale deed of some land in favour of the plaintiff; on the basis of compromise the defendant asked for original agreement to sell dated 4.9.1992 from the plaintiff stating that since the compromise had been effected between the parties, the original agreement to sell was to be shown to the Manager of the trust to execute the sale deed, therefore the plaintiff handed over that document to him, however, subsequently the defendant No.1 through Sh.Satish Khurana refused to return the agreement to plaintiff.

That application had been dismissed by the trial Court on 6.4.2022.

Then Ms.Sushila approached the trial Court moving an application under Order 1 Rule 10 CPC for being impleaded as a defendant contending that she had purchased the property vide registered sale deed dated 21.2.2019, as such she had become owner of the same.

However, that application was dismissed by the trial Court vide separate order dated 6.4.2022. Thereafter, Ms.Sushila approached SP, Bhiwani contending that the agreement to sell dated 4.9.1992 was a forged and fictitious document and result of collusion between the plaintiff and Secretary of defendant No.1 trust, namely Sh.Satish Khurana.

The plaintiff approached Satish Khurana to hand over the agreement to sell dated 4.9.1992; Satish Khurana accordingly handed over a copy of agreement to sell dated 4.9.1992, which was in damaged condition stating that when on an earlier occasion, he had taken the agreement from him and had shown it to Sukhdev Narang, President of the trust then Sukhdev Narang after seeing it removed the signature part and returned it to him in that condition only, in that way, the plaintiff is having agreement to sell dated 4.9.1992 but is in destroyed condition, whereas attested copy of the same is already on the file. Therefore, necessary permission be given to the plaintiff to prove copy of agreement to sell dated 4.9.1992 already on the case file by way of secondary evidence.

5. That application was opposed by the defendants contending that a similar application filed by the plaintiff had been dismissed by the trial Court on 6.4.2022; the plaintiff had challenged that order by way of filing a Civil Revision Petition before the High Court but that revision petition was dismissed vide order dated 12.5.2022 and the version set up by the plaintiff that he had handed over the original agreement to sell to defendant has already been disbelieved by the High Court; the agreement produced by the plaintiff is mainly a piece of paper and not a complete

document bearing signatures of vendor, vendee or witnesses, therefore, the application in quesiton is also liable to be dismissed.

6. After hearing the counsel for the parties, the trial Court had dismissed the application vide the impugned order leaving the plaintiff aggrieved and he has filed the present revision petition.

7. I have heard learned counsel for the revision petitioner besides going through the record and I find that there is absolutely no merit in the revision petition. The impugned order passed by the trial Court is quite detailed and well reasoned. For ready reference, the operative part of the order is being reproduced as under:-

6. A perusal of order dated 06.04.2022 passed by learned Predecessor court on an application filed by applicant/ plaintiff for directing defendant no. 1 to produce original agreement to sell and in alternative to allow the applicant to lead secondary evidence to prove this document shows that the ground taken by the applicant/plaintiff in the present application is in continuation to the ground taken by him in the previous application that is handing over the original agreement to sell dated 04.09.1992 to defendant no.1 on account of compromise and then refusal by defendant no. 1 to return the original agreement to sell to the plaintiff. Now, the ground in continuation is that version of disallowing of application of applicant Sushila and filing of complaint by her before S.P. Bhiwani, plaintiff asked Satish Khurana for original agreement to sell in order to prove their innocence and does he handed over the original agreement to sell destroyed condition to

plaintiff/applicant. However, the version of the plaintiff with respect to the compromise and circumstances stated by him of qua handing over of original agreement to defendant no. 1 is discarded by the learned Predecessor Court.

7. Further, perusal of order passed by the Hon'ble Punjab and Haryana High Court in Civil Revision no. 1881 of 2022(O&M) date of decision 12.05.2022 shows that even Hon'ble High Court dismissed the civil revision and no permission was granted to lead secondary evidence considering the fact that previously when defendants moved application for directing plaintiff to place on record the original agreement to sell, plaintiff/applicant on dated 9.5.2016 made statement that agreement to sell was not available and as and when it will be available, would be produced in the court. But applicant/plaintiff never produced the same before the court of law and never disclosed this fact that it is in possession of plaintiff, rather filed application against defendant no.1 for producing the agreement to sell. The paragraph of the order passed by Hon'ble High Court is reproduced as under

“A perusal of the above-reproduced provision reveals that when it appears that the original is in possession and power of the person against whom the document is sought to be proved and the person concerned does not produce it in such a case secondary evidence would be admissible. In the present case, admittedly, an application was earlier moved by the defendant-respondents for production of the same very document. A statement was then made by the plaintiff petitioner on

09.05.2016 that the agreement to sell was not traceable and as and when it was traced same would be produced on record. The story as set up in the application is totally belied by the events as described above. No case is made out by the plaintiff-petitioner for permitting him to lead secondary evidence”.

8. *Now, when this version of plaintiff/applicant of handing over of agreement to sell to defendant no. 1 is already disbelieved by the Hon’ble High Court itself obviously the version in continuation of previous one i.e. handing over of the original agreement to sell to plaintiff in destroyed condition by defendant no. 1 cannot be relied upon. Moreover, it is not the case that plaintiff had asserted or had taken stand from beginning that original agreement to sell had been lost and secondary evidence was to be led. Subsequently, such application was filed and on the same grounds previously an application filed by plaintiff was dismissed. It appears that plaintiff was not producing agreement to sell intentionally and wanted to contest this case by leading secondary evidence and that had been confronted with the plea of defendant that original agreement to sell was false and fabricated. Hence, keeping in view the legal provisions in this regard, above discussion and observation given by the Hon’ble High Court in Civil Revision no. 1881 of 2022(O&M), this court finds no ground in relying upon the story put forth by the plaintiff that runs in continuation of the previous application.*

9. *In view of the above discussion, the application in hand is hereby dismissed.*

8. I find that the order does not suffer from any infirmity or illegality and it can certainly be not termed to be perverse or suffering from any element of arbitrariness. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

9. As far as the judgments referred to by learned counsel for the revision petitioner are concerned, those do not come to his help for various reasons. In judgment **Dhanpat Versus Sheo Ram (Deceased) Through Lrs. & Ors., 2020 AIR 2666** by the Apex Court, it was held that an application is not required to be filed in terms of Section 65(c) for secondary evidence of a document if foundation for leading secondary evidence is there either in plaint or in evidence. There is no dispute with such proposition of law. But here the facts are different. When the plaintiff had filed an application for permission to lead secondary evidence, which was dismissed by the trial Court, he had approached the High Court by way of filing revision against that order, which too was dismissed. For the second time he had filed a similar application although according to him that is for the reason of change in circumstances. However, the story set up with regard to change in circumstances does not come out to be convincing or plausible and no ground was made out to accept the application and it was rightly declined by the trial Court. As per the facts of the judgment, the version of the defendant in that case was that the certified copy of the will was produced and defendants were able

to show sufficient ground for leading secondary evidence, whereas it is not so in the present case since no certified copy of the alleged agreement to sell has been made available on record by the plaintiff. The existence of the original agreement to sell claimed by the plaintiff is also doubtful since the document sought to be proved is incomplete and in damaged condition without bearing the signatures of the parties and witnesses.

10. Similarly other judgments i.e. **Roshan Lal Versus Charanjit and others** passed in CR-5961-2016 decided on 11.11.2022, **Madan Lal Versus Shankar and others** passed in RSA No.327 of 1989 decided on 1.11.2018 and **Vinod Kumar Versus Satbir Singh** passed in CR-2575-2020 decided on 3.3.2021 by a Co-ordinate Bench of this Court, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

11. Finding no merit in the revision petition, the same stands dismissed.

4.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No