



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

**CR-861-2015 (O&M)
Decided on: 31.07.2024**

HARPREET SINGH

...Petitioner

Versus

SUNIL SINGAL AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Shrey Goel, Advocate and
Mr. Shvetanshu Goel, Advocate
for the petitioner.

Service of respondent No.1 waived of
Vide order dated 02.07.2024.

Ms.Vibha Nagar, Advocate for
Mr. A. R. Takkar, Advocate
for respondent No.2.

RITU TAGORE, J.

1. This revision, filed under Article 227 of the Constitution of India, is directed against the order dated 19.01.2015 (Annexure P-7), whereby learned Civil Judge (Junior Division), Karnal in a case titled as 'Harpreet Singh and another Vs. Sunil Singhal and another', allowed the application (Annexure P-5), filed by respondent No.1, permitting him to lead secondary evidence of the documents i.e. agreement to sell dated 05.08.2004; Will dated 06.08.2004 executed by Chamel Singh in favour of



the applicant/respondent No.1, the associate of respondent No.2, on the premise that original of these documents have been lost.

2. Learned counsel for the petitioner contends that petitioner and respondent No.3, are children of deceased Promila daughter of Chamela Singh, who was recorded as owner in possession of the suit land as detailed in the plaint, which was ancestral property in his hands. Their mother, being daughter of Chamela Singh, had the pre-existing rights in the suit land. Upon the death of Chamela Singh and their mother, the petitioner and respondent No 3, sought to mutate the suit land in their name. However, they discovered that the suit land had already been entered in the name of respondent No.1 based on Will No.275/3 dated 06.08.2004 and in favour of respondent No.2 vide sale deed 9407/1 dated 15.12.2004. Consequently, petitioner and respondent No.3, filed a suit (Annexure P-1), against the respondents No.1 and 2, seeking a declaration, possession and permanent injunction.

3. Learned counsel submits that respondent No.1, is not contesting the suit and is *ex parte* before the learned trial Court. Respondent No.2 is contesting the suit and has filed the written statement (Annexure P-2). Learned counsel further submits that during pendency of the suit, respondent No.1 filed an application (Annexure P-5) seeking permission to lead secondary evidence by way of certified copies of the documents; sale deed dated 15.12.2004 and Will dated 06.08.2004, alleging that the original had been lost. The petitioner opposed the application through their reply (Annexure P-6). However, learned trial Court in arbitrary manner and contrary to the settled provisions of law, allowed the application.

4. Learned counsel argues that learned trial Court failed to note that respondents No.1 and 2 took contrary positions regarding the loss of the



documents. This is evident from their reply (Annexure P-4) to an application moved by petitioner under Order 8 Rule 1-A read with Section 151 CPC (Annexure P-3). In their reply, respondents No.1 and 2 asserted that the documents had been pledged while securing loan from the bank. Conversely, in their present application, they claimed that the documents had been lost, without providing any specific date for the loss or return of the documents from the bank. The plea regarding loss of documents is vague, and learned trial Court failed to notice the discrepancies and infirmities in the respondents' stand. The learned trial Court failed to note that the respondents did not establish the basic ingredients of Section 65 of Indian Evidence Act, 1872 and allowed the application without valid reasons. In support of his arguments learned counsel referred to **Vijay Vs. Union of India and others, 2024(1) Apex Court Judgements (SC) 769.** It is stated that order (Annexure P-7) is indefensible in the eyes of law and should be set aside.

5. On the contrary, learned counsel for respondent No.2, defended the order, stating that in the application, it is duly averred that documents in question were not found in the almirah of the record room of the company-respondent No.2, and a DDR dated 23.08.2014 was lodged in this regard. This, *prima facie*, establishes the loss of the documents and fulfills the requirement of Section 65 of the Indian Evidence Act 1872. Learned counsel submits that by way of secondary evidence, contesting respondent No.2 seeks to place on record the certified copies of the documents, prepared by the public authorities in ordinary course of their business, and photocopies of the certified copies are already on the file. It is stated that order is valid in the eyes of law. A prayer is made to dismiss the revision lacking merits.



6. I have heard learned counsel for the parties and have gone through the paper book, with their valuable assistance.

7. It is matter of record, the civil suit (Annexure P-1) filed by the petitioner and respondent No.3, against respondents No.1 and 2 is pending adjudication before the learned trial Court. It is explicit on record that during the proceedings, petitioner filed an application under Order 8 Rule 1-A read with Section 151 CPC (Annexure P-3) requesting the Court to direct the respondent No.2 to produce original documents mentioned in the written statement. In response dated 05.08.2014, respondent No.2 expressed non-availability of original documents with them, stating they were pledged with the Bank to secure the loan and only certified copies are in their possession. Subsequently, respondent No 1, filed an application seeking permission to present secondary evidence of the documents citing loss of documents from the storeroom of the company.

8. The learned trial Court passed the following order, while allowing the application, relevant part is extracted herein in below: -

“I have carefully considered the rival contentions in the light of the material placed on record. Certified copies of the aforesaid documents i.e. the registered agreement to sell and Will have already been placed on record by the defendant. Therefore, foundational facts regarding the existence of the said documents has been proved. The relevancy, admissibility and probative value of the secondary evidence intended to be led by the applicant would be considered at the time of final disposal of the suit. At this stage, there appears to be no legal impediment in allowing the applicant to lead secondary evidence of the aforesaid documents subject to formal proof of their due and valid execution as per law as well as the fact regarding loss of the same as averred in the application.”



9. At this stage, it is relevant to go through the provisions of Section 61, 63 and 65 of Indian Evidence Act, 1872 read as under: -

“61. Proof of contents of documents. — The contents of documents may be proved either by primary or by secondary evidence.

63. Secondary evidence. — Secondary evidence means and includes —

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

65. Cases in which secondary evidence relating to documents may be given—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power —

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(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;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of Section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”

10. Plain reading of the aforesaid provisions, provide for primary and secondary evidence. In **Cement Corporation of India Limited Vs. Purva, (2004) 8 SCC 270**, the Constitution Bench of Hon’ble the Supreme Court, explained that primary/original evidence is required to be given at first instance and secondary evidence may be given in the absence of original evidence, whence proper explanation of non-availability of original is provided. Section 63 gives exhaustive definition of secondary evidence and Section 65 provides for allowing the secondary evidence of documents, under certain circumstances detailed therein. Hon’ble the Supreme Court in **Vijay (supra)** in para No.33 observed as under: -



“33. After perusing various judgments of this Court, we can deduce the following principles relevant for examining the admissibility of secondary evidence:

33.1 Law requires the best evidence to be given first, that is, primary evidence.

33.2 Section 63 of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence.

33.3 If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given.

33.4 A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party.

33.5 When the non-availability of a document is sufficiently and properly explained, then the secondary evidence can be allowed.

33.6 Secondary evidence could be given when the party cannot produce the original document for any reason not arising from his default or neglect.

33.7 When the copies are produced in the absence of the original document, they become good secondary evidence. Still, there must be foundational evidence that the alleged copy is a true copy of the original.

33.8 Before producing secondary evidence of the contents of a document, the non-production of the original must be accounted for in a manner that can bring it within one or other of the cases provided for in the section.

33.9 Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents. It has to be proved in accordance with the law.”



11. Apply the principles culled out in above decision and applying the ingredients of Section 65(a) of Indian Evidence Act, 1972 to the facts of present case, in reference to the averments made by the respondents No.1 and 2 in application (Annexure P-5) and reply (Annexure P-3), it is evident that the applicant has taken inconsistent stand regarding the existence of original documents. Therefore, the exact status of these documents is not ascertained.

12. Further, the defence of respondents No.1 and 2, hinges on these documents. Earlier, they were directed to produce the documents but had expressed their inability to do so, claiming that documents in question were not in their possession and power; but with mortgagee bank. In application for secondary evidence submitted subsequently to the above reply, the respondents pleaded the loss of the documents from the almirah of the record room of their office. However, the application (Annexure P-5) does not state when the original documents were taken back from the Bank. The existence of original documents and its loss, which is one of the ingredients of Section 65 (c) has thus not been established.

13. In the considered opinion of this Court, the learned trial Court erred in appreciating the basic requirements of Section 65(c) before allowing the application. The availability of certified copies on record by itself does not establish the existence of the original documents because a certified copy is nothing but secondary evidence. The learned trial Court further did not declare the contents of DDR No.23.08.2014 except for mentioning the same while projecting the arguments of the learned counsel for the applicant. There is no averment made in the application, showing and suggesting that the bank had taken the original documents at the time of extending the loan



and its return, after redeeming the property, if any. Learned lower Court merely on the basis of certified copies of the documents, which by itself is secondary evidence, allowed application. Based on the pleadings the respondents failed to out make out existence of foundational facts regarding existence of original documents and their loss, making out a case for grant of secondary evidence.

14. In view of the foregoing discussion, it is held that learned trial Court committed serious jurisdictional error in allowing the application. The order is clearly indefensible in the eyes of law and cannot withstand judicial scrutiny and is hereby set aside. The present petition is allowed, accordingly.

15. Nonetheless, the contesting respondent, is at liberty to move an application for leading secondary evidence, whence fulfils the requisite conditions as laid under the law.

16. It be noted that the observations made above shall not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

17. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

31.07.2024

Rimpal

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