

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R.No.8372 of 2018(O&M)
Date of Order:28.02.2024

Vijay Kumar Goyal

.Petitioner

Versus

Neena Rani and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abdul Shehbaz Thind, Advocate
for the petitioner.

ANIL KSHETARPAL, J

1. The petitioner before this Court has filed a suit for specific performance of the agreement to sell. During the pendency of the suit, he filed an application in the trial court for conducting an inquiry with respect to loss of original memorandum of agreement dated 24.02.1996 and the original agreement dated 14.05.2011. He claims that both these documents in original were produced at the time of filing of the suit, however, these have been replaced with coloured photocopies from the court record.

2. The trial court after examining the court file has formed an opinion that the plaintiff himself has placed coloured and laminated copies of the documents. Thus, the application was dismissed.

3. The correctness of the aforesaid order has been challenged in this revision petition.

4. This Bench has heard the learned counsel representing the petitioner at length and with his able assistance perused the paper book.

5. The learned counsel representing the petitioner admits that the evidence has already been recorded and now the case is fixed for final

arguments.

6. The learned counsel representing the petitioner submits that the trial court was required to, at the first instance, hold an inquiry with regard to the loss of the documents. He submits that the trial court cannot proceed with the case unless and until the inquiry is held.

7. This court has considered the submissions of the learned counsel representing the petitioner.

8. While dismissing the application, the trial court has recorded the following observations:-

“Admittedly, the plaintiff has exhibited the coloured and laminated copy of the agreement to sell as Ex.-P86 and the memorandum of Ex-P1. Both these documents are coloured copies of the alleged original documents. The plaintiff has himself exhibited on the coloured copies of the two documents, Plaintiff has filed the application for examining the handwriting expert. Who has obtained the samples from the colour copies Ex-P-86 and Ex-P1. The witness of plaintiff, Meena Goyal has also relied upon these documents and over a long period of more than seven years, the plaintiff has never pointed out that the documents Ex-P1 and P-86 are not original. The plaintiff has placed reliance upon one list of documents mentioned by plaintiff dated 31.05.2011 in which the plaintiff has mentioned that the original agreement to sell and the memorandum in original. 7. The plaintiff has himself exhibited the laminated coloured photocopies of the memorandum of agreement dated 24 02.1996 and agreement dated 14.05.2011. The said documents has been filed by the undersigned when the same were exhibited on 16.10.2017. At that time plaintiff did not point out the fact that the said agreement is not

original. 8 The plaintiff has also not mentioned in his application that if the original agreement to sell and original memorandum was placed on record at the time of filing the suit, they why did the plaintiff placed on record coloured and laminated copies of the two documents, which look like original on record. Plaintiff has also not mentioned the reason that why the plaintiff has not pointed out the reason for not exhibiting the original documents. Furthermore, plaintiff has placed on record the coloured copies, which is duly laminated on record. # 9. All the above said facts are admitted by the PW Meena Goyal at the time of her cross-examination. She has categorically admitted this fact that the original agreement to sell was never produced in the present case. Further, she has admitted this fact that Ex-P1 and Ex-P86 are not the original documents but are the coloured photocopies of agreement to sell and memorandum. She has stated that she is not in possession of any such agreement to sell and memorandum. She has further stated that she had pasted the photographs of plaintiff Vijay Kumar on the original agreement. After the admission of these facts by the witness of plaintiff Meena Goyal, the present application has been filed by plaintiff. The conduct of plaintiff itself shows that the plaintiff has never filed the original documents on record and the plaintiff has filed the coloured laminated photocopies on record, which look like original. The contentions of the plaintiff are without any merits and stands dismissed. The present case is adjourned to 5.10.2018 for evidence of plaintiff.”

9. In the opinion of the court, the trial court should have proceeded with the trial while permitting the parties to lead evidence even with respect to replacement of the original documents.

10. Keeping in view the aforesaid facts, it is declared that the observations made by the trial court while dismissing the application on 05.10.2018, shall not be constructed as final expression on the merits of the case. The court will call upon the parties to lead evidence and ultimately decide the suit after evaluating the evidence. If ultimately the court comes to a conclusion that the documents have been replaced, the trial court will be entitled to draw inference on that basis or order further inquiry.

11. Disposed of accordingly.

12. All the pending miscellaneous applications, if any, are also disposed of.

February 28, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO