

[143] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2266-2024
Date of Decision : 21.10.2024

Gopi Chand (since deceased)
through his LRs and another ...Petitioners

versus

Rajesh Kumar and othersRespondents

Coram : HON’BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Avnish Mittal, Advocate for the petitioners.
Mr. G.C. Shahpuri, Advocate for respondent Nos.1 to 4.

PANKAJ JAIN, J. (ORAL)

[1] Present revision petition is directed against order dated 06.02.2024 passed by the learned Civil Judge (Junior Division), Jagadhri, whereby an application filed by the plaintiffs to prove agreement to sell dated 03.02.2012 by way of secondary evidence stands allowed.

[2] For the convenience, parties are hereinafter referred to by their original positions in the civil suit i.e. the petitioners as defendants and respondents as plaintiffs.

[3] Plaintiffs filed suit for specific performance of agreement to sell dated 03.02.2012. While leading evidence, application was filed to prove the agreement by way of secondary evidence in terms of provisions as contained under Section 65 of the Indian Evidence Act. The plaintiffs claimed that at the time of filing of the suit, plaintiffs annexed copy of the

agreement to sell with the plaintiff but at the time of recording of the evidence, plaintiffs could not trace the original agreement to sell despite various efforts. The same having been misplaced, the plaintiffs be allowed to produce and prove the same by way of secondary evidence.

[4] An application was opposed by the defendant(s), claiming that the agreement to sell in question i.e. 03.02.2012 was in fact cancelled with mutual consent. Endorsement was made by both the parties on the back of it. A new agreement to sell dated 22.07.2012 came to being with new terms and conditions. Plaintiffs knowing the aforesaid fact well, does not want to produce the original agreement to sell. The aforesaid application stands allowed vide impugned order observing that the existence and execution of agreement to sell dated 03.02.2012 was not in dispute. The plaintiffs are entitled to prove the agreement to sell by leading secondary evidence.

[5] Mr. Mittal, counsel for the petitioners, while assailing the impugned order, asserts that prior to allowing the secondary evidence, plaintiffs were required to prove that the documents sought to be proved by way of secondary evidence was copy of the original document. He relies upon Section 63 of the Evidence Act to submit that copy of the copy cannot be allowed to be proved by way of secondary evidence.

[6] Mr. Mittal, counsel for the petitioners, further refers to prayer made in the plaint to submit that the *mala fide* of the plaintiffs were cleared from the prayer made in the plaint which shows that the plaintiffs seek specific performance of the agreement to sell but denies the covenant with

respect to consideration part. He thus submits that the plaintiffs themselves having admitted at the first instance that the agreement to sell was voidable, the suit itself was not maintainable. In order to hammerforth his contention, counsel for the petitioners relies upon '**Badrunnisa Begum versus Mohamooda Begum**', 2001(3) RCR (Criminal) 481, '**N. Srihari (died) and others versus N. Prakash and others**', 2010(7) RCR (Civil) 1329, '**Jawahar Lal versus Surinder Singh and others**', 2014(1) RCR (Civil) 520, '**Ram Karan Khichar versus Mangal Deep Cooperative Housing Building Society Limited, Hisar and others**', 2015(48) RCR (Civil) 924 and '**Government of A.P. and others versus Karri Chinna Venkata Reddy and others**', 1994 AIR (Supreme Court) 591.

[7] *Per contra*, Mr. Shahpuri, counsel for respondent Nos.1 to 4, submits that once the execution of the agreement to sell dated 03.02.2012 and thereafter execution of agreement to sell dated 27.07.2012 was not disputed by the petitioners-defendants, learned Trial Court rightly allowed the application filed by the plaintiffs to lead secondary evidence to prove agreement to sell dated 03.02.2012.

[8] I have heard counsel for the parties and have carefully gone through the records of the case.

[9] In order to appreciate the argument raised by Mr. Mittal, counsel for the petitioners, it will be apt to peruse Section 63 and Section 65

of the Indian Evidence Act, 1872. The same read as under:-

“63. Secondary evidence - *Secondary evidence means and includes-*

- (1) certified copies given under the provisions hereinafter contained;*
- (2) copies made from the original by the 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 document 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 documents is admissible.

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

In case (e) or (f), a certified copy of 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] Chapter 5 of the 1872 Act deals with documentary evidence. Section 61 contemplates that proof of contents of documents may be proved either by primary or by secondary evidence. Section 62 defines primary evidence. Section 63 deals with secondary evidence. In terms of Section 63 (2), secondary evidence includes copies made from the original by mechanical processes, which in themselves ensure the accuracy of the copies and copies compared with such copies. Section 65 enumerates cases in which secondary evidence relating to documents may be given. Section 64 provides the documents must be proved by primary evidence, except in cases

as enlisted under Section 65.

[11] In the present case, prior to institution of the instant suit, petitioners-defendants filed a suit for permanent injunction seeking decree of injunction against the plaintiffs-respondents from interfering in his possession over the suit property and from alienating, transferring or otherwise creating any charge over the property, which is subject-matter of the instant suit as well. During the course of arguments, Mr. Mittal, counsel for the petitioners produced copy of the said plaint before this Court. Bare perusal of the plaint itself reveals that in the said plaint also, petitioners themselves propounded agreement to sell dated 03.02.2012 and new agreement to sell dated 27.07.2012. In the said suit, an application was filed by the present petitioners, seeking directions to the defendants to produce the original documents. The application has been placed on record as Annexure P-8 along with the present petition. By way of said application, present petitioners sought directions to defendant No.3 to produce original agreement to sell and receipt dated 03.02.2012. The same was responded to by the respondents/plaintiffs in the present suit and defendants in the said suit, claimed as under:-

“1. That in reply to para No.1 of the application runs as under:-

(i) As far as original agreement to sell and receipt of earnest money dated 03.02.2012 is concerned it was taken back by the applicant on 27.07.2012 under threat and coercion and the circumstances

have already been explained by the answering defendant in his written statement. Hence, the original is in possession of the applicant.”

[12] In view of the aforesaid facts, existence of the agreement to sell dated 03.02.2012 is not in dispute. Mr. Mittal, counsel for the petitioners is not in a position to dispute that the foundational proof with respect to existence thereof has come on record. Thus, respondents have successfully made out a case for proving the agreement to sell in question, by way of secondary evidence in terms of Section 65 of the Evidence Act.

[13] His contention is that the evidence sought to be proved by way of secondary evidence does not fall within the ambit of Section 63, the same being photocopy of a photocopy. There is nothing on record to corroborate the plea raised by counsel for the petitioners. Till the petitioners are able to prove that the secondary evidence sought to be adduced is photocopy of photocopy, the judgments relied upon will not help the cause of the petitioners. He has not been able to demonstrate as to how the copy of the agreement to sell sought to be produced by way of secondary evidence is a photocopy of photocopy. In the reply filed by present petitioners in the earlier suit, respondents claimed that the agreement to sell dated 03.02.2012 was taken back by the present petitioners after new agreement to sell dated 22.07.2022 came into existence. Thus, it is yet to be determined by the learned Trial Court as to whether the mode of proof and the probative value of the document has been proved by the respondents or not?

[14] In view of the above, this Court finds no reason to interfere in a

to prove the agreement to sell by way of secondary evidence whose existence and execution is not in dispute.

[15] In view of the above, finding no merits in the present revision petition, the same is **disposed off**.

(PANKAJ JAIN)
JUDGE

21.10.2024
'R. Sharma'

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