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

CR-976-2024 (O&M)

Date of Decision : 28.07.2025

Krishan Kumar & Anr

... Petitioner(s)

Versus

Jamana Devi

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.K. Chugh, Advocate for the petitioners.

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Aman Gautam, Advocate and
Mr. Ashutosh Sharma, Advocate for the respondent.

Mr. Sanjeev Kumar, Addl. AG Haryana.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 18.11.2023 (Annexure P-5) whereby the application filed by the plaintiff-respondent under Section 65 of the Indian Evidence Act, 1872 for permission to lead secondary evidence has been allowed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for recovery of ₹28,50,000/- alongwith interest. Written statement was filed. During the plaintiff-respondent's evidence, an application was filed by the plaintiff-respondent for production of secondary evidence on the ground that in a Bail Application arising out of FIR No.256 dated 24.06.2014 registered under Sections 420, 406, 506, 34 of the Indian Penal Code, 1860 at Police Station City Bahadurgarh, which was filed in the

Court of Additional Sessions Judge, Jhajjar, the complainant therein had produced the original agreement to sell and the Court after retaining a photocopy of the same had sent it to the Sub-Registrar, Bahadurgarh for initiation of recovery proceedings qua deficient stamp papers as per rules. It was further stated that the Registry Clerk was also summoned from the office of Sub-Registrar, Bahadurgarh, who failed to produce the original agreement to sell despite 6-7 opportunities. It was further stated in the application that deficient stamp papers had also been made good vide the receipt No.63 dated 02.01.2015 amounting to ₹1,15,000/-. Reply was filed to the said application and vide the impugned order the application was allowed. Hence, the present revision petition.

3. Learned counsel for the petitioner would contend that the Clerk from the office of Sub-Registrar, Bahadurgarh had appeared as PW6 and had stated in his cross-examination that the original agreement dated 15.05.2013 was not entered in the record and, hence, the learned counsel would contend that there was no question of leading secondary evidence as the loss was not proved. It is further the contention of the learned counsel that even the source of the photocopy has not been stated in the application.

4. *Per contra*, the learned senior counsel appearing on behalf of the plaintiff-respondent has contended that the agreement was deposited with the office of Sub-Registrar, Bahadurgarh for making good the deficient court fees as was directed by the Additional Sessions Judge, Jhajjar vide order dated 11.12.2014 in Bail Application No.743 of 2014. It is further the contention that even the deficient stamp papers were made good vide the receipt No.63 dated 02.01.2015. The learned senior counsel has further

pointed out that the said document was deposited by the Sub-Registrar's office with the SHO Police Station, City Bahadurgarh and as of today the original agreement is neither traceable in the Sub-Registrar's office, Bahadurgarh nor in the Police Station City Bahadurgarh and, hence, the necessity to lead secondary evidence.

5. I have heard the learned counsel for the parties.

6. In the impugned order dated 18.11.2023, the relevant portion of the order passed by the Additional Sessions Judge, Jhajjar in the Bail Application No.743 of 2014 has been reproduced which reads as under :

“On 09.09.2014 this court has also taken the original Agreement to Sale dated 15.05.2013 from the complainant party and after retaining the photocopy thereof, same was sent to the Sub-Registrar, Bahadurgarh to initiate recovery proceedings of deficient stamp papers as per rules as there was recital in the Agreement to Sale that sale is for a consideration of rupees twenty-seven lacs out of which rupees twenty-six lacs stood paid as earnest money and balance has to be paid before the Sub-Registrar at the time of registration of sale deed.”

7. The order dated 11.12.2014 which has been reproduced in the impugned order clearly reveals that the original agreement to sell was produced in the Court and after retaining a photocopy thereof the same was sent to the Sub-Registrar, Bahadurgarh to initiate recovery proceedings qua deficient stamp papers. PW6 – Subash Chander, Registry Clerk from the Sub-Registrar's office Bahadurgarh appeared and deposed that the original agreement has been sent to the office of SHO, Police Station City Bahadurgarh vide Ex.P16 which is the despatch entry in the Despatch

Register. ASI Naresh Kumar, MM City, Bahadurgarh appeared in person and got his statement recorded that the original agreement was not annexed in the case pertaining to FIR No.256 of 2014 under Sections 420, 406, 506, 34 of IPC registered at Police Station City Bahadurgarh. In the absence of the original, the plaintiff-respondent has no other option but to file an application for secondary evidence.

8. Hon'ble Supreme Court in the case of **“Vijay Vs. Union of India & Ors. [2023 SCC Online SC 1585]** has adduced the following principles for examining the admissibility of secondary evidence :

“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 nonproduction 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.”

9. When non-availability of a document is sufficiently and properly explained, an application for secondary evidence can be allowed. In the present case, non-availability of the document has sufficiently and properly been explained by the plaintiff-respondent. In view thereof, no fault

can be found with the impugned order dated 18.11.2023 (Annexure P-5).

10. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

11. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

28.07.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO