



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

CR-5823-2023

Date of decision : 19.03.2025

GURMEJ SINGH AND ORS

....Petitioners

Versus

BALKAR SINGH AND ORS

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.S. Nagra, Advocate and
 Mr. B.S. Mann, Advocate for the petitioners.

 Mr. R.D. Rattewal, Advocate for respondent No.1.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 5th of September, 2023 passed by Additional Civil Judge, Senior Division, Ajnala whereby application filed by the plaintiff under Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Act of 1872') seeking permission to prove the exchange deed dated 31.10.2000 by way of secondary evidence, has been allowed.

2. Plaintiff/respondent No.1 filed application claiming that the exchange deed was scribed by deed writer Gurcharan Singh in the presence of attesting witnesses. The original deed was handed-over to the Revenue Patwari for sanctioning mutation. The exchange deed was lost/misplaced by the Revenue Patwari. He sought permission to prove the same by way of secondary evidence.



3. Trial Court allowed the application filed by the plaintiff holding that the application being supported by affidavit, plaintiff is entitled to lead secondary evidence to prove the lost deed.

4. Counsel for the petitioners has assailed the said order claiming that prior to leading secondary evidence, plaintiff was required to comply with the conditions as enumerated under Section 65 of the Act of 1872. Meaning thereby, he was required to prove not only the existence of the document but also loss thereof. Reliance is being placed upon ratio of law laid down by Supreme Court in the case of **Smt. J. Yashoda vs. Smt. K. Shobha Rani, (2007) 5 SCC 730**.

5. Counsel for respondent No.1/plaintiff has supported the impugned order relying upon ratio of law laid down by this Court in the case of **Smt. Sobha Rani vs. Ravi Kumar, 1999(1) RCR (Civil) 98** to submit that once the plaintiff stated on oath by way of affidavit w.r.t. loss of the document, he was not required to prove the same in absolute terms at the stage of seeking permission to lead secondary evidence.

6. I have heard counsel for the parties and have carefully gone through records of the case.

7. In order to appreciate the rival contentions, it will be apt to peruse Section 65 of the Indian Evidence Act, 1872 (now re-enacted as Section 60 in the Bharatiya Sakshya Adhiniyam, 2023). The same reads as under :



“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 1 [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.”

8. There is no dispute that the case pleaded by the plaintiff if at all, shall relate to Section 65(c) of the Act of 1872. In order to enure benefit thereof, the plaintiff was not only required to prove existence but also loss thereof. The whole case pleaded by the plaintiff in the application is that the exchange deed was misplaced by Patwari. Admittedly, the Patwari has not been examined prior to filing the application.

9. In view thereof, this Court finds that without there being any semblance of evidence to prove the loss of the document, the Trial Court erred in allowing the application filed by the plaintiff seeking permission to prove the exchange deed by way of secondary evidence. Resultantly, the present revision petition is allowed. The impugned order is hereby set aside. The Trial Court is directed to decide the application afresh, in accordance with law.

March 19, 2025
Dpr

(Pankaj Jain)
Judge

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