



206

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

CR-1023-2020 (O&M)

Date of Decision : 05.03.2026

Mohan Singh (deceased) through LRs

... Petitioner(s)

Versus

Jasvir Singh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sarju Puri, Senior Advocate with
Ms. Anjila Gaur, Advocate and
Mr. Digvijay Manchanda, Advocate for the petitioners.

Mr. Chetan Bansal, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 07.01.2020 (Annexure P-1) whereby the application filed by the plaintiff-petitioner to de-exhibit the affidavit of Charanjit Singh and not to read the same in evidence, has been declined.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for specific performance of agreement to sell dated 03.05.2011. The case set up by the plaintiff-petitioner was that the original agreement to sell was handed over to the counsel - Mr. Hardeep Singh, Advocate - who did not return the same back to the plaintiff-petitioner and only handed over a notarized copy, therefore, the suit was filed on the basis of the notarized copy. During the course of the evidence of the plaintiff-petitioner, the plaintiff-petitioner moved an application for secondary

evidence (Annexure P-6) for proving on record the agreement to sell dated 03.05.2011. The said application was dismissed vide order dated 11.08.2016 (Annexure P-7) holding as under :

“As per the requisites of Section 65 of the Indian Evidence Act, permission to lead secondary evidence of document can be granted in case the original is shown to be in possession or power of any person and after notice under Section 66, the said person does not produce it. In the case in hand, on appearance of the respondents/defendants before the court, in his written statement filed by respondent no.1, he has specifically mentioned about the fact that original agreement to sell is in possession of Charanjit Singh. Before institution of the application in hand, applicant has not opted to serve notice upon Charanjit Singh in accordance with the rules to produce the said agreement. Hence, keeping in view the fact that original agreement is in existence and is in possession of Charanjit Singh, it can not be termed to have been lost. Accordingly, no permission to lead secondary evidence can be granted and the present application stands dismissed.

To come up on 26.10.2016, for entire evidence of the plaintiff at his own responsibility”

Thereafter, an application (Annexure P-8) was filed under Section 66 of the Indian Evidence Act, 1872 by the plaintiff-petitioner for issuance of notice to Mr. Hardeep Singh, Advocate to produce the original agreement to sell dated 03.05.2011. The said counsel appeared and stated that the original agreement to sell had been handed over to Charanjit Singh, which was also the stand taken by the defendant-respondents in their written statement. Thereafter, an application (Annexure P-9) was filed for issuance of notice to Charanjit Singh son of Rajinder Singh to produce the original agreement to sell dated

03.05.2011. The said Charanjit Singh initially appeared without any record on 15.11.2018. Thereafter, he appeared and on 01.12.2018 instead of producing the document i.e. original agreement to sell dated 03.05.2011 filed his affidavit in examination-in-chief as PW1 and admitted the entire case of the defendant-respondents. It is to be noticed that Charanjit Singh is the son of the defendant-respondent No.2 - Balvir Kaur. Subsequently, an application (Annexure P-12) was filed by the plaintiff-petitioner for de-exhibiting the affidavit. Reply was filed to the application and vide the impugned order dated 07.01.2020 the said application was dismissed holding that on the day the affidavit was tendered, the presence of the counsel of the plaintiff-petitioner, namely, Mr. Amit Sharma, had been marked and if the witness had not been called by the plaintiff-petitioner, an objection ought to have been raised by him. Aggrieved by the same, the present revision petition has been filed.

3. Learned senior counsel for the plaintiff-petitioner would contend that PW1 - Charanjit Singh - who tendered his affidavit in examination-in-chief, did not ever figure in the list of the witnesses provided by the plaintiff-petitioner. Infact, after the application for secondary evidence had been dismissed on the ground that an application under Section 66 of the Indian Evidence Act, 1872 ought to have been filed by the plaintiff-petitioner, the said Charanjit Singh was summoned only pursuant to the application filed under Section 66 of the Indian Evidence Act, 1872. Learned senior counsel would further contend that the said witness instead of handing over the original agreement to sell dated 03.05.2011 has cleverly submitted an affidavit purporting to be a witness of the plaintiff-petitioner herein though he was never cited as a witness by the plaintiff-petitioner. Learned senior counsel has further pointed out that this is a clever device to defeat the legal right of the

plaintiff-petitioner as the said Charanjit Singh is none other than the son of the defendant-respondent No.2 - Balvir Kaur. Learned senior counsel has further referred to Section 144 of the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as 'BSA 2023') to contend that a person summoned to produce a document does not become a witness by mere fact that he produces the document and cannot be cross-examined unless and until he is called as a witness.

4. *Per contra*, the learned counsel for respondent Nos.1 and 2 has contended that he does not wish to address the arguments on merits, however, there are three technical issues which he would like to address upon. Firstly, the application itself has been filed after a period of 7-8 months. Secondly, vide order dated 15.11.2018 it was observed by the Trial Court that the statement of the witness could not be recorded and the said witness was bound down for recording of his statement and therefore the affidavit was filed. It is thirdly contended that the counsel for the plaintiff-petitioner was present at the time when the affidavit was tendered and if any objection had to be raised, it had to be raised at that point of time.

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

6. In the present case, as observed earlier, the learned counsel for respondent Nos.1 and 2 has not addressed any arguments on merits nor given any cogent explanation as to how Charanjit Singh appeared as a witness for the plaintiff-petitioner herein. As noticed above, Charanjit Singh was never cited as a witness by the plaintiff-petitioner and was only issued notice on an application filed under Section 66 of the Indian Evidence Act, 1872 and was required only to produce the original agreement to sell dated 03.05.2011.

Though the said Charanjit Singh brought the summoned agreement to sell

dated 03.05.2011, however, he also filed his affidavit in examination-in-chief as PW1. A witness who is summoned to produce a document possibly cannot be treated as a witness as per the provisions of Section 139 of the Indian Evidence Act, 1872 (Section 144 of the BSA 2023). It is not the case of the defendant-respondents that Charanjit Singh was ever summoned as a witness by the plaintiff-petitioner. Infact, a very clear clever method has been devised whereby the son of the defendant-respondent No.2 - Balvir Kaur - who was called upon to produce the original agreement to sell dated 03.05.2011, not only produces the said document but goes on to appear as a witness of the plaintiff-petitioner without being cited as one and admits the case of the defendant-respondents.

7. At this stage the learned counsel for respondent Nos.1 and 2 states that he does not even press the technical objections which he has raised and states that he would have no objection if the present revision petition is allowed.

8. This Court refrains itself from commenting on the conduct of Charanjit Singh and the counsel.

9. In view of the above, the impugned order dated 07.01.2020 is set aside and the application (Annexure P-12) stands allowed. The present revision petition is allowed. Pending applications, if any, also stand disposed off. Any observation made herein shall not be treated as an expression of opinion on the merits of the case.

05.03.2026
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

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