

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****133****CR-119-2025 (O&M)****Date of decision: 13.01.2025****Buta Singh****...Petitioner(s)****Vs.****Ram Pal****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.Deepak Arora, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present petition under Article 227 of the Constitution of India is filed by the defendant for setting aside the impugned order dated 11.11.2024 (Annexure P6) passed by the learned Civil Judge (Senior Division), Kurukshetra, vide which the application filed by the respondent/plaintiff seeking permission to lead secondary evidence of two agreements to sell viz. Agreement to Sell dated 26.02.2016 and Agreement to Sell dated 22.08.2016, was allowed.

2. Brief facts of the case as set out in the plaint (Annexure P-1), are that on 01.11.2017 the respondent/plaintiff had filed a Civil Suit No.1227/2017 for recovery of Rs.84,70,000/- from the petitioner/defendant with regard to the payments made by the plaintiff in pursuance to the aforesaid Agreement to Sell dated 26.2.2016 executed between the parties in respect of suit land measuring 55 kanal 12 marla. The said land was bought by the plaintiff along with one Paramjit Kaur. At the time of execution of Agreement to Sale dated 26.2.2016, a



sum of ₹20 lakhs was handed over by the plaintiff to the defendant. Said Paramjit Kaur had contributed towards the said payment. Thereafter on 22.8.2016, the plaintiff had paid another sum of ₹50 lakhs to the defendant. Said Paramjit Kaur had contributed towards this payment as well. In acknowledgement of the payment, the defendant had executed a writing/ Receipt dated 22.8.2016 itself, which was duly witnessed and attested by the Notary Public Kurukshetra, who entered the same in his register at Serial no. 1934 dated 22.8.2016. It was further pleaded that on 24.8.2016, the defendant had gone to the house of Paramjit Kaur and had asked her to handover the original agreement to them. Accordingly, Paramjit Kaur had handed over the original agreement dated 26.2.2016 to the defendant. It was further mentioned in the plaint that on 02.10.2016, the plaintiff had handed over the original agreement receipt dated 22.08.2016 to the defendant as he had demanded the same. It is further mentioned that the defendant had admitted receiving a sum of ₹70,00,000 as part of the sale consideration from the plaintiff. It was alleged that however, the petitioner had rescinded from the aforesaid agreements and undertook to return the amount of Rs.70 lakh to the plaintiff.

3. Upon notice, the defendant had appeared and filed written statement (Annexure P2) contesting the suit and denying therein that the said agreements to sell had been handed over to him. It is in this background that the plaintiff filed the present application dated 'Nil'



(Annexure P4) for permission to lead secondary evidence in respect of the abovesaid agreement to sell date 26.2.2016, and the writing/Receipt dated 22.8.2016, which has been allowed vide the impugned order. The defendant filed reply dated 11.3.2022 (Annexure P-5), to the said application.

4. Learned counsel for the petitioner/defendant submits that in the reply (Annexure P5), it has been categorically denied by the defendant that the Agreement to Sell dated 26.2.2016 or the writing/receipt dated 22.08.2016 were ever handed over to him by the plaintiff. In his reply, the defendant has also objected that although the plaintiff had pleaded in his application that the agreement was lost, but no criminal complaint in this regard had been made to the police regarding the loss of agreement dated 26.2.2016. It was stated that in the absence of any police complaint, the allegation of the plaintiff of loss of agreement, cannot be believed and taken into consideration. It was also mentioned that a criminal complaint had been filed by the defendant against the plaintiff under Sections 420, 467, 468 and 120-B IPC in which the plaintiff has been summoned vide order dated 16.09.2021 (Annexure P7).

5. Learned counsel for the defendant further submits that in passing the impugned order, the learned trial Court failed to appreciate that case of the plaintiff with respect to the Agreement dated 26.02.2016 did not fall under Section 65(a) of Indian Evidence Act, 1872,



as he failed to prove that *“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.”*

6. Learned counsel reiterates that the plaintiff has sought to lead secondary evidence in respect of the Agreements in question as the same are stated to have been misplaced by him. However, no FIR or police complaint has been lodged by the plaintiff in this regard. It is contended that in such a situation, he could not have been permitted to lead secondary evidence. In support of this contention, learned counsel relies upon judgment of the Rajasthan High Court in **“Ram Singh & Others Vs. Anguri” 2022(1) Civil Court Cases 602 (Rajasthan)**, wherein it has been held as under: -

“Evidence Act, 1872, Ss.65, 66 - Secondary evidence - Photocopy of document - Pre-conditions as laid down u/s 66 of Evidence Act not satisfied by petitioners - Neither any admission was made by petitioners for procuring original document nor any FIR or any document to show that original has been misplaced - Mere bald statement by petitioner would not be sufficient for accepting a photocopy of original document as a secondary piece of evidence - Application rightly rejected.”

7. No other argument is raised on behalf of the petitioner.

8. I have heard learned counsel for the petitioner and perused the case file in great detail.



9. It has been argued on behalf of the petitioner that as per the plaintiff the Agreements in question have been lost/misplaced by him; and that the said assertion is liable to be rejected being unbelievable, as no police complaint has been registered by the plaintiff regarding the lost agreements. However, the said contention of the petitioner is totally contrary to the record, as a bare reading of the application (Annexure P4) filed by the plaintiff seeking permission to lead secondary evidence shows that no such averment has been made therein by the plaintiff. It has been the consistent case of the plaintiff that the agreements in question are in the possession of the defendant. It has nowhere been stated by the plaintiff that the said agreements are lost. As such, there was no requirement on part of the plaintiff to register an FIR/complaint. For this reason, the petitioner can derive no benefit from the relied upon judgement as the same is not applicable to the facts and circumstances of the present case. It would also therefore appear that the petitioner is deliberately trying to obfuscate the issue. In this regard, relevant findings of the learned Court below are as under: -

“6. Defendant, denied the possession of both documents in written statement. As per defendant, there is no report reported to the police regarding the loss of above mentioned documents and in the absence of any police report, it cannot be said that both documents are lost and due to that reason permission to lead secondary evidence cannot be given.

7. As regard the existence of both documents, defendants admitted in his written statement. As regard the loss of both



documents, it is the stand of plaintiff that both documents are in possession of defendant, however, denied by the defendant. In these circumstances, when plaintiff alleged that both documents are not lost and is in possession of defendant, which is denied by defendant then there is no need to report the matter to police regarding loss of both documents.

8. In these circumstances, the existence of both documents and plaintiff is not in possession of both documents stands established and there is no other way to prove both documents except by way of secondary evidence. This court also perused the authorities relied upon by learned counsel for defendant and law discussed in those authorities is not disputed, but with due regard to those authorities, they are not applicable of the facts of the present case.”

10. In view of the above, present petition is **dismissed**.
11. Pending application(s) if any also stand(s) disposed of.

13.01.2025

Sunena

(Nidhi Gupta)

Judge

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