



CR No. 6790 of 2025

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6790-2025 (O&M)
Decided on : 24.09.2025

Vijay @ Vijay Thukral

.....Petitioner

Versus

Vijay Kumar & Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Vishal Pundir, Advocate,
for the petitioner.

DEEPAK GUPTA, J.

Petitioner herein is defendant No.1 before learned Additional Civil Judge (Sr. Divn.) Karnal in civil suit bearing CIS No. 2640 of 2021, titled *Vijay Kumar Vs. Vijay & Anr.* He is aggrieved by the order dated 19.08.2025 (*Annexure P-8*), whereby application of the plaintiff-respondent No.1 for leading secondary evidence has been allowed.

2. Perusal of paper-book would reveal that based upon an agreement to sell dated 30.07.2018 and supplementary agreements dated 01.12.2018 and 09.01.2020, the plaintiff-respondent had filed a suit for seeking decree of possession by way of specific performance. It was stated in the plaint itself that on 02.10.2021 plaintiff had gone to the office of his Advocate from his house on motor-cycle. On coming back, he found that original documents were lost in the area of Taraori, District Karnal. He tried his best to trace the original documents, but failed to do so. He lodged DDR with the police station Taraori on 12.10.2021 in this regard.

3. Defendant No.1-petitioner did not deny the execution of the agreement but claimed that plaintiff was not entitled to specific performance as plaintiff was not interested in getting the property.

4. During proceedings, application (*Annexure P-6*) was moved by the plaintiff under Section 65 of the Indian Evidence Act seeking permission

**CR No. 6790 of 2025**

to lead secondary evidence in respect of the original agreement to sell dated 30.07.2018 and supplementary agreements dated 01.12.2018 and 09.01.2020, which has been allowed by the Court by way of impugned order.

5. Assailing the impugned order, it is contended by learned counsel that testimony of plaintiff was not even recorded, when the application for secondary evidence has been allowed and thus, petitioner did not get the opportunity to cross-examine the plaintiff. Learned counsel refers to ***Baldev Krishan (deceased) through LRs Vs. Kali Ram(deceased) through LRs & Ors. , 2019(1) PLR 810.***

6. After hearing learned counsel, this Court does not find any merit in the contention.

7. In the plaint itself, plaintiff has made out a case of loss of original agreement to sell and supplementary agreements. He has specifically stated that same were lost and he had lodged DDR in this regard. Defendant in his written statement has not denied the existence of the agreement to sell, though impliedly he claimed that agreements stood cancelled. In the circumstances, the trial Court did not commit any error in permitting the plaintiff-respondent to prove the agreement and supplementary agreements by way of secondary evidence.

8. Reliance of learned counsel on ***Baldev Krishan's case (supra)*** is misplaced. In that case, an application for secondary evidence was declined. The applicant had approached this Court. It was held that though there is admission to agreement to sell, but it was yet to be proved that it pertained to the subject matter of the suit property or not, and in the circumstances, the Court should have allowed the secondary evidence subject to existence and loss. It was also observed by this Court that defendants would have a right to cross-examine and lead evidence in rebuttal to what the plaintiff intends to lead qua existence and loss.

9. In this case, the plaintiff-respondent is yet to be cross-examined as a witness. The defendant i.e. petitioner herein will get an opportunity to cross-examine the plaintiff, regarding the existence or loss



CR No. 6790 of 2025

or admissibility of the documents in question. As such, finding no illegality or perversity in the impugned order, this petition is hereby dismissed.

24.09.2025

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**(DEEPAK GUPTA)
JUDGE**

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