



CR-5765-2025 (O&M)

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

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**CR-5765-2025 (O&M)
Decided on :- 26.08.2025**

Dharmesh @ Dharmesh Kumar

...Petitioner

VERSUS

Smt. Saroj

...Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Shiv Raj Malik, Advocate for the petitioner.

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MANDEEP PANNU J.

1. The petitioner has filed the present civil revision under Article 227 of the Constitution of India assailing the order dated 18.07.2025 passed by the learned Trial Court, whereby the application filed by the plaintiff under Section 151 CPC for permission to lead secondary evidence of an agreement to sell dated 03.08.2021 was allowed.

Facts

2. The plaintiff/respondent filed a suit on 11.03.2022 seeking possession by way of specific performance of an agreement to sell dated 03.08.2021 for a total sale consideration of ₹50,00,000/–, alleging that a sum of ₹10,00,000/– had been paid as earnest money through cheque. The agreement envisaged execution of the sale deed on or before 02.11.2021.

3. The defendant/petitioner denied execution of the alleged agreement. He asserted that the genuine agreement dated 03.08.2021 was for a sale consideration of ₹65,25,000/–, with ₹12,00,000/– paid as earnest money, and



contended that the agreement relied upon by the plaintiff/respondent is forged and fabricated, typed upon a photocopy of the same stamp paper.

4. The plaintiff/respondent never produced the original agreement of ₹50,00,000/-. An earlier application dated 10.04.2023 filed by her to compel the defendant to produce the original agreement was dismissed on 17.10.2023 on the ground that the defendant/petitioner was not in possession of it. Left with no other alternative, she filed another application on 19.01.2024 under Section 151 CPC seeking permission to lead secondary evidence of the photocopy of the agreement.

5. The defendant/petitioner objected to the maintainability of the application under Section 151 of CPC, arguing that (i) no foundational facts had been laid; (ii) the authenticity of the photocopy was not established; and (iii) the document was forged and fabricated, hence outside the scope of secondary evidence.

Findings of the Trial Court

6. The learned Trial Court allowed the application, placing reliance upon *Surinder Kaur v. Mahal Singh and others, 2014 (1) RCR (Civil) 467*, which summarises the principles governing secondary evidence. The Court observed that the plaintiff had laid the necessary foundation, namely that the original document was not forthcoming despite earlier efforts, and that the photocopy could be permitted to be produced in secondary evidence.

Submissions of learned counsel for the petitioner

7. Learned counsel for the petitioner/defendant has reiterated that the application was not maintainable since it was filed under Section 151 CPC without reference to Section 65 of the Indian Evidence Act, 1872. It is further urged that the very existence of the alleged agreement is in dispute, that the copy is



fabricated, and that no secondary evidence can be permitted where genuineness itself is under challenge. In support of his contention, learned counsel has placed reliance upon the judgment of Hon'ble Supreme Court passed in the case of *J. Yashoda v. K. Shobha Rani, 2007 (2) RCR (Civil) 840*.

Findings

8. I have carefully considered the submissions made by the learned counsel for the petitioner and perused the record.

9. The facts reveal that the suit of the plaintiff - Saroj is founded entirely upon the agreement to sell dated 03.08.2021. The existence of an agreement on that date is not denied by the defendant; what is in dispute are its terms, namely the consideration and the amount of earnest money. The plaintiff claims it was for ₹50,00,000/- with ₹10,00,000/- earnest money, while the defendant asserts it was for ₹65,25,000/- with ₹12,00,000/- earnest money and the one the photocopy of which has been produced, never existed. It is relevant to mention here that the photocopy of the agreement produced by the plaintiff is duly attested by the Notary Public and entered in the register of the Notary Public at Serial No. 282 dated 03.08.2021. This entry lends prima facie support to the existence of the document. The original agreement has not been produced despite earlier attempts to secure it from the defendant. These facts constitute sufficient foundation for permitting secondary evidence under Section 65 of the Indian Evidence Act.

10. The law is well settled that secondary evidence can be permitted only when the party seeking to rely upon it lays foundational facts showing the non-availability of the original. In the present case, such foundational facts stand established, the suit is based on the disputed agreement, the original has not been



produced despite earlier application and the photocopy is shown to be entered in the notary's register.

11. It must also be emphasised that allowing a party to adduce secondary evidence does not amount to proof of the document itself. It only permits production of the copy as evidence, subject to its genuineness and execution being proved at trial. The burden will remain upon the plaintiff to establish the validity and authenticity of the document through evidence.

12. As regards the petitioner's reliance on *J. Yashoda v. K. Shobha Rani, 2007 (2) RCR (Civil) 840*, the said judgment is of no assistance to him. In that case, the Supreme Court held that as long as higher or superior evidence is in possession of a party, no inferior proof shall be given, and that secondary evidence is admissible only in the absence of primary evidence. It was further observed that if the original itself is found to be inadmissible owing to failure of the party to prove it to be valid, the same party cannot be permitted to introduce secondary evidence of its contents. The facts of the present case, however, are clearly distinguishable. Here, nothing has come on record to show that the original agreement is inadmissible, rather, the original is missing and could not be produced. It is for this reason that the plaintiff has sought to rely upon the photocopy, duly entered in the notary's register, and is entitled to lead secondary evidence thereof.

13. The judgment cited by the petitioner does not bar the plaintiff from being granted permission to lead secondary evidence in the present factual scenario. The trial Court has rightly exercised its discretion by granting such permission, while leaving the question of genuineness, validity, and probative value of the document to be adjudicated at the stage of trial.



14. In view of the above, this Court finds no infirmity in the impugned order. The present revision petition being devoid of any merit is accordingly dismissed.

15. Pending application(s), if any, also stand disposed off.

August 26, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No