



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6045 of 2024

Date of Decision: 22.01.2025

Gurmit Singh and Others

... Petitioner(s)

Versus

Rattan Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rohit Joshi, Advocate
for the petitioner(s).

Mr. Satbir Rathore, Ms. Jyotika Behl and
Mr. Vinod Pundir, Advocates, for the respondent.

Anil Kshetarpal, J.

1. The petitioner herein is defendant No.2 in the plaintiff's pending suit for the grant of decree of declaration that the sale deed dated 05.09.2018 executed by the plaintiff in favour of defendant No.1 through defendant No.2 is illegal, null and void.

2. During the pendency of the suit, an application was filed by the plaintiff for permission to lead secondary evidence in order to prove a copy of compromise dated 15.06.2018, allegedly executed by the plaintiff and the defendants. The Trial Court allowed the application because the plaintiff alleged that the document is in possession of the defendants.

3. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper book.

4. The learned counsel representing the petitioner submits that the

aforesaid settlement was arrived at in the police station and therefore, the document is not in possession of the petitioner. He further submits that the aforesaid settlement was cancelled.

5. This Court has considered the submissions of the learned counsel representing the petitioner.

6. At this stage, the Trial Court has only permitted the plaintiff to prove the document by leading secondary evidence. Moreover, there is no requirement to file an application for seeking permission to lead secondary evidence.

6. This Court after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, has concluded that there is no provision that mandates filing of an application for permission to lead secondary evidence. In ***Ashok Kumar vs. Sudesh Rani and another, (Civil Revision No.8166 of 2018, decided on 21.07.2023)***, the Court held as under:-

“In fact, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, this Court in RSA-327-1989, titled as “Madan Lal Vs. Shankar and others”, decided on 01.11.2018, came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being filed under misconception, which has now attained provisions of an epidemic. Even the Supreme Court in Dhanpat Vs.

Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606 made observations in this regard. In Civil Revision No.2575 of 2020, titled as “Vinod Kumar Vs. Satbir Singh”, decided on 03.03.2021, this Court has held as under:-

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

January 22, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No