



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

(122)

CR-5769-2025 (O&M)
Date of Decision:-**26.08.2025**

RAMAN WADHWA

...Petitioner

Versus

SATNAM SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Shivya Sehgal, Advocate
for the petitioner.

VIRINDER AGGARWAL, J. (Oral)

1. This civil revision has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the impugned order dated 23.07.2025 (Annexure P-6) passed by learned Civil Judge (Junior Division), Tarn Taran vide which photocopy of the agreement to sell was ordered to be not impounded, but deficient stamp duty and penalty was ordered to be paid.
2. The order has been assailed on the grounds that as per provisions of Sections 33 and 35 of the Stamp Act, 1899 only an original document can be validated and photocopy of the document cannot be validated.
3. I have heard learned counsel for the petitioner and gone through the impugned order minutely.



4. After perusal of impugned order relevant extract of para No.6 of the same are reproduced as under:-

“6. The present suit has been filed by the plaintiffs for possession of suit property by way of specific performance of agreement to sell dt. 05.03.2018 allegedly executed by deceased Roshan Singh predecessor in interest of the defendants who are contesting the present suit being legal heirs of deceased Roshan Singh. The contesting defendants have denied execution of agreement to sell dt. 05.03 2018 by deceased Roshan Singh and when the case was fixed for evidence of the plaintiffs, the present application has been moved by them seeking permission to make good the deficient stamp duty, whereas on the other hand, the Ld. Counsel for the contesting defendant has vehemently argued that alleged agreement dt. 05.03.2018 has not been produced on file by the plaintiffs and one page of the same is missing and the plaintiffs have sought permission from this Court to prove the same by way of secondary evidence by moving application under Section 65 of the Indian Evidence Act, which was allowed by be then Ld. Additional Civil Judge (Senior Division), Tarn Taran vide order dt. 24.08.2023 and as the original document has not been produced on file, the present application cannot be allowed as the copy of stamp paper has been produced in the Court and Hon'ble Supreme Court of India in Civil Appeal no.4910 of 2023, decided on 29.11.2023 has specifically held that if a document at is required to be stamped is not sufficiently stamped then the position of law well settled that a copy of such document as secondary evidence cannot be adduced. No doubt, in the present case the original stamp paper has not been produced before the Court but the facts of the abovesaid judgment passed by Hon'ble Supreme Court of India are not applicable to the present case as in the present case the question before this Court is not as to whether the insufficiently stamped agreement can be allowed to be proved by way of secondary



evidence as the said issue has already been decided by the Ld. Additional Civil Judge (Senior Division), Tarn Taran vide order dt. 24.08.2023, rather the present application has been moved by the plaintiffs seeking permission to make good the deficient stamp duty on the stamp papers on which the alleged agreement dt. 05.03.2018 has been written. No doubt, Hon'ble Supreme Court of India in abovesaid judgment has held that Section 35 of the Stamp Act forbids the letting of secondary evidence in proof of its contents. The Section excludes both the original instrument and secondary evidence of its contents if it needs to be stamped or sufficiently stamped. This bar as to the admissibility of the documents is absolute. Where a document cannot be received in evidence on the ground that it is not duly stamped, the secondary evidence thereof is equally inadmissible in evidence. But already discussed above, the application for proving agreement to sell dt. 05.03.2018 by leading secondary evidence has already been allowed by the Ld. Additional Civil Judge (Senior Division), Tarn Taran and the proper remedy with he respondent/defendant no.1 was to file revision against order dt. 24.08.2023. In the present case, vide the present application, the plaintiffs/applicants are seeking permission to make good the deficient stamp duty on the document i.e. agreement to sell dated 05.03.2018, which has to be allowed.”

5. The Judgment of Constitution Bench of Hon’ble Apex Court in *State of Bihar vs. M/s Karam Chand Thapar and Brothers Limited, 1962 AIR (SC) 110* is relevant and para No.6 is reproduced as under:-

6. It is next contended that as the copy of the award in court was unstamped, no decree could have been passed thereon. The facts are that the arbitrator sent to each of the parties a copy of the award signed by him and a third copy also signed by him was sent to the court. The copy of the award which was sent to the Government would appear to have been insufficiently stamped. If that had been produced in court, it could have



been validated on payment of the deficiency and penalty under Section 35 of the Indian Stamp Act, 1899. But the Government has failed to produce the same. The copy of the award which was sent to the respondents is said to have been seized by the police along with other papers and is not now available. When the third copy was received in court, the respondents paid the requisite stamp duty under Section 35 of the Stamp Act and had it validated. Now the contention of the appellant is that the instrument actually before the court is, what it purports to be, "a certified copy", and that under Section 35 of the Stamp Act there can be validation only of the original, when it is unstamped or insufficiently stamped, that the document in court which is a copy cannot be validated and "acted upon" and that in consequence no decree could be passed thereon. The law is no doubt well-settled that the copy of an instrument cannot be validated. That was held in *Rajah of Bobbili v. Inuganti China Sitaramasami Garu*, 26 Ind App 262, where it was observed:-

"The provisions of this section (section 35) which allow a document to be admitted in evidence on payment of penalty, have no application when the original document, which was unstamped or was insufficiently stamped, has not been produced; and, accordingly, secondary evidence of its contents cannot be given. To hold otherwise would be to add to the Act a provision which it does not contain. Payment of penalty will not render secondary evidence admissible, for under the stamp law penalty is leviable only on an unstamped or insufficiently stamped document actually produced in Court and that law does not provide for the levy of any penalty on lost documents"

Therefore, the question is whether the award which was sent by the arbitrator to the court is the original instrument or a copy thereof. There cannot, in our opinion, be any doubt that it is the original and not a copy of the award. What the arbitrator did was to prepare the award in



triplicate, sign all of them and send one each to the party and the third to the Court. This would be an original instrument, and the words, "certified copy" appearing thereon are a misdescription and cannot have the effect of altering the true character of the instrument. There is no substance in this contention of the appellant either. In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.”

6. In the present case, the learned Court has allowed secondary evidence of the document to be led. Therefore permission to validate photostat copy of document was granted and the same position is covered by the judgment of Andhra Pradesh High Court in M. Vankata Rao(died) per LR & Another vs. M. Sheshagiri Rao & Others, 2009(4) CivCC 635, para No.6 of the judgment, which is relevant is reproduced as under:-

“6. Admittedly, the document, which is required to be sent for impounding, is a photocopy of the document and the original has not been produced before the Court below. Therefore, the same cannot be an instrument, which can be impounded under the Indian Stamp Act, 1899. May be, the Court below has agreed to receive the said document as secondary evidence, but that does not mean that the same can be impounded. The Court below has rightly taken note of this fact and considered the matter in right perspective and dismissed the petition by the impugned order. I am of the opinion that no illegality has been committed by the Court below, warranting interference of this Court under Article 227 of the Constitution of India. The civil revision petition is devoid of merits and is liable to be dismissed.”

7. Now considering the fact that only a photocopy of the agreement was produced during the course of proceedings. However, as per law laid down by Hon’ble Apex Court, the only original document can be



validated not a photocopy of the document. In cases, where parties are allowed to lead secondary evidence even then photocopy cannot be validated, so the impugned order suffers from material illegality. The learned Court has exercised the jurisdiction not vested in the Court, so the revision petition is allowed and the impugned order is set aside.

8. However, observations made herein above may not to be construed as opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

9. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

26.08.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No