

HIGH COURT OF PUNJAB AND HARYANA

Bench: HON'BLE MR. JUSTICE KARAMJIT SINGH

Date of Decision: 20.11.2023

CR-6377-2016**Kuldeep Singh****....Petitioner****VERSUS****Tej Kaur and another****....Respondents****Legislation:**

Section 65 of the Evidence Act

Order 39 Rule 2A of CPC (Civil Procedure Code)

Subject:

Setting aside an order allowing secondary evidence in a dispute over passage obstruction, specifically related to an application under Order 39 Rule 2A CPC.

Headnotes:

Civil Procedure – Setting aside order allowing secondary evidence – Dispute over passage obstruction – Application under Order 39 Rule 2A CPC – Petitioner contests admissibility of the agreement to sell dated 11.3.2011 as secondary evidence – Photocopy of the agreement shows insufficient stamping – Legal contention based on the Supreme Court's decision in Hariom Agrawal v. Prakash Chand Malviya 2007(4) RCR (Civil) 548 upheld – Supreme Court ruled that insufficiently stamped document photocopies cannot be admitted as secondary evidence even on payment of fee and penalty, and impounding can only be done for the original document, not its copy – Impugned order dated 10.8.2016 (Annexure P-6) set aside – Interim order dated 24.9.2016 vacated – Learned trial Court directed to proceed

expeditiously with the trial – Parties instructed to appear before the learned trial Court for further proceedings on the next fixed date in the suit. [Para 1-10]

Referred Cases:

Hariom Agrawal v. Prakash Chand Malviya 2007(4) RCR (Civil) 548

Advocates:

Mr. Gagandeep Singh Sirphikhi, Advocate, for the petitioner.

Ms. Swati Verma, Advocate, for respondent
No.1.

KARAMJIT SINGH, J.

Present petition has been filed by the petitioner/defendant No.1 for setting aside order dated 10.8.2016 (Annexure P-6) passed by learned Civil Judge, Junior Division, Batala in Case No.28 of 2012 titled Tej Kaur v. Kuldip Singh and others, vide which, the application filed by the plaintiff/respondent No.1 under Section 65 of Evidence Act to prove one agreement to sell dated 11.3.2011 executed by Karamjit Singh in favour of the petitioner by way of secondary evidence, was allowed.

¹ Brief facts of the case are that respondent No.1 filed suit for permanent injunction restraining the defendants including the petitioner from obstructing or encroaching the passage in dispute. The suit is being contested by the defendants. Learned trial Court directed both the parties to maintain *status quo* vide order dated 9.6.2012. Thereafter, respondent No.1 filed an application under Order 39 Rule 2A CPC on the ground that other party committed breach of the aforesaid order of *status quo*.

3. The said application under Order 39 Rule 2A CPC is contested by the petitioner and other defendants and during the pendency of the said application, respondent No.1 filed an application to produce and prove one agreement to sell dated 11.3.2011 by way of secondary evidence in order to

prove the existence of passage in dispute. The application was resisted by the petitioner. The learned trial Court allowed the said application and permitted respondent No.1 to lead secondary evidence to prove agreement to sell dated 11.3.2011.

4. Being aggrieved, the present revision petition has been filed by the petitioner.
5. I have heard the counsel for the parties.
6. Counsel for the petitioner has *inter alia* contended that that the alleged agreement to sell dated 11.3.2011 is not relevant for the disposal of the application under Order 39 Rule 2A CPC. It has been further contended that from the perusal of the photocopy of the said agreement to sell, it appears that the same was executed on stamp paper of ` 500/- and thus, the said document is under stamped. Counsel for the petitioner further submits that respondent No.1 intends to produce and prove photocopy of the said insufficiently stamped document which is not permissible under law. In support of his contentions, counsel for the petitioner has placed reliance upon the decision of Hon'ble Supreme Court in **Hariom Agrawal v. Prakash Chand Malviya** 2007(4) RCR (Civil) 548 wherein it was held that since the original document was inadmissible being not sufficiently stamped, its photocopy cannot be allowed to be taken as secondary evidence and copy of the said document cannot be validated by impounding it. Hon'ble Apex Court further held that such photocopy cannot be admitted as secondary evidence even if required fee and penalty is paid as impounding could be done in respect of the original document and not its copy. Counsel for the petitioner has further contended that in light of the aforesaid settled position of law, the impugned order being illegal, deserves to be set aside. 7. Counsel for respondent No.1, while supporting the impugned order, has *inter alia* contended that agreement to sell dated 11.3.2011 is necessary for proper adjudication of the application under Order 39 Rule 2A CPC and as the original of the said document is not available, learned trial Court rightly allowed the respondents to produce its copy by way of secondary evidence. It has been prayed that the present revision petition be dismissed.
8. I have considered the submissions made by the counsel for the parties.

9. Admittedly, respondent No.1 intend to produce photocopy of agreement to sell dated 11.3.2011 by way of secondary evidence. Concerned photocopy of the document is Annexure P-4. Counsel for respondent No.1 has not disputed the fact that photocopy (Annexure P-4) shows that the original document was insufficiently stamped. Hon'ble Apex Court in **Hariom Agrawal's** case (supra) has clearly held that if the document was not sufficiently stamped, its photocopy cannot be admitted as secondary evidence even on payment of fee and penalty and that impounding could be done only with regard to original document and not its copy.
10. In light of the aforesaid settled position of law, the impugned order being not passed in accordance with law, deserves to be set aside. Consequently, the present revision petition is allowed and impugned order dated 10.8.2016 (Annexure P-6) passed by the learned trial Court is hereby set aside. Interim order dated 24.9.2016 is hereby vacated and the learned trial Court is directed to proceed ahead with the trial in an expeditious manner. Parties are directed to appear before the learned trial Court for further proceedings on the next date already fixed in the suit.

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