

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No. 187 of 2020****Reserved on : 06.11.2025****Decided on: 28.11.2025**

Smt. Saroj Devi and others

... Petitioners

Versus

Gurvinder Singh and another

... Respondents

Coram***Hon'ble Mr. Justice Ajay Mohan Goel, Judge.*****Whether approved for reporting?¹**

For the petitioners : Mr. Karan Singh Kanwar, Advocate.

For the respondents : Mr. Devyani Sharma, Senior Advocate
with Mr. Shivam Sharma, Advocate.**Ajay Mohan Goel, Judge**

By way of this petition, the petitioners have assailed the order dated 24.09.2019, passed by the Court of learned Senior Civil Judge, Court No. 1, Poanta Sahib, in case No. 113/1 of 2008, titled as Saroj Devi vs. Gurvinder Singh, in terms whereof, an application filed under Section 65 of the Indian Evidence Act by the petitioners herein has been dismissed.

2. Brief facts necessary for the adjudication of this petition are that a suit for declaration has been filed by the predecessor-in-interest of the petitioners against the respondents, praying for the following reliefs:-

"It is therefore, prayed that a decree declaration to the effect

¹ Whether reporters of the local papers may be allowed to see the judgment?



that the plaintiff is owner-in-possession of land comprised in Khata Khatauni no.48/88 min, khasra no.114, measuring 1-19 Bighas, situated in Mauza Kishanpura, Toh Paonta Sahib, Distt. Sirmaur (H.P.) and the Bals land measuring 19 Deed Dt.24/05/2008 regarding Biswas, is null and void being fraudulent without consideration and also unconscionable transaction of sale having been executed by defendant no.2, in favour of her brother, defendant no.1, acting as the General Power of Attorney of the plaintiff, on the basis of GPA Dt. 31/03/2008, which is also null and void, being fraudulent and without consideration and these documents are not binding on the rights of the plaintiff, consequently the mutation no. 1009 Dt. 11/06/2008 attested on the basis of the Sale Deed Dt.24/05/2008, is also null, void and not binding on the rights of the plaintiff with the injunction consequential relief restraining the of permanent defendants from and interfering, dispossessing, alienating encumbering the land measuring 19 Biswas, which is part of the suit land, in any manner whatsoever, themselves or through their agents, servants and legal representatives, along with the costs of the suit, may kindly be passed in favour of the plaintiff and against the defendants and or any other relief, which this Ld. Court deems fit, may also be granted in the interest of justice.”

3. The defendants are contesting the same. During the



pendency of the civil suit as the original plaintiff died, the present petitioners have been impleaded as plaintiffs in his place.

4. During the pendency of the civil suit, an application was filed by the present petitioners under Section 65 of the Indian Evidence Act, praying for permission to lead secondary evidence to prove the copy of the agreement for sale dated 31.03.2008 by way of additional evidence. It was averred in the application that the original plaintiff has died on 11.04.2014. The original plaintiff used to remain under the influence of liquor and at the time of filing of the suit, he did not hand over the Photostat copy of the agreement dated 31.03.2008 to his Counsel. The applicant Saroj Devi on 22.09.2014 found a Photostat copy of the agreement to sale in the Truck of the deceased where he used to keep his documents. She brought these documents to the knowledge of their Counsel, who informed her that it was a copy of agreement to sell with regard to five biswas of land for a sale consideration of Rs. 2,25,000/- dated 31.03.2008, i.e. date of the disputed power of attorney alleged to have been executed by the Amar Singh and on the basis whereof defendant No. 1 got 19 biswas of land transferred by way of sale deed. It was further mentioned in the application that the photocopy shows that the original agreement was attested by the Notary Public on 31.03.2008 and Shri Rattan Singh Chauhan had entered the said agreement at Sr. No. 130 in his Notary Public register in the regular course of



duty. The original sale agreement was with defendant No. 1 and as the applicant were rustic villagers and defendants had played fraud with their late predecessor-in-interest, therefore, the application be allowed and the applicants be permitted to lead secondary evidence to prove the document.

5. In terms of the reply filed to the application, it was mentioned therein that a concocted false story was cooked up the applicants qua the Achhar Singh remaining under the influence of liquor etc. it was mentioned in the reply that he was quite will and in a position to understand each and every thing. He was not suffering from any disease and the alleged agreement was a forged and fictitious documents. The suit was filed by Achhar Singh 29.10.2008 and if any such document really existed, then he shall have handed over the same to his Counsel during the pendency of the suit or even when he made statement in the Court on 10.06.2010. It was denied that any agreement to sell was executed or any original thereof was with the defendants.

6. Record demonstrates that said application was dismissed by the learned Trial court on 13.10.2014.

7. Feeling aggrieved, the petitioners preferred a civil revision before this Court i.e. Civil Revision No. 178 of 2014, titled as Saroj Devi and others vs. Gurvinder Singh. The civil revision was dismissed by this Court vide order dated 24.02.2015, which is on



record, by observing that it was open for the petitioners to move to the learned Trial Court to avail the remedies as were available under the Code of Civil Procedure.

8. Thereafter, the plaintiffs filed an application under Order 6, Rule 17 of the Code of Civil Procedure and mentioned therein that during the pendency of the suit, a new fact had come to their notice qua the existence of the agreement to sell dated 22.09.2014 and they wanted to incorporate certain amendments on the strength thereof in the plaint. This application was dismissed by learned Trial Court vide order dated 27.03.2015. Feeling aggrieved of dismissal, said order was challenged by the petitioners before this Court by way of Civil Revision No. 20 of 2015 and in terms of order dated 30.09.2016, the revision petition was allowed by this Court and the amendments were allowed to be incorporated in the plaint. Thereafter again, an application was filed under Section 65 of the Indian Evidence of the Act by the petitioners vide P-13 to lead secondary evidence to prove the Photostat copy of agreement dated 31.03.2008 and in terms of the impugned order, this application has been dismissed.

9. Learned Trial court while dismissing the application in terms of order dated 24.09.2019, has been pleased to return the following findings:-

"I have heard Id. counsels for the parties and perused



the record with minute care. As per the averments of applicants, late Shri Achhar Singh often used to remain under the influence of alcohol and he was also mentally weak and infirm due to excessive consumption of liquor day and night, therefore, he could not apprehend the relevancy of the agreement to sell and has not given it to his counsel at the time of filing of the suit but when the applicant, Saroj Devi on dated 22.09.2014 found photo stat copy of the agreement to sell in box, she consulted her Advocate who told her it to be the photo stat copy of the agreement to sell executed dated, 31.03.2008 for a sale consideration of 12,25,000/-and then application for placing it on record has been filed by the applicant On the other hand, respondents have denied the existence of any such document. According to the defendants, defendants, agreement to sell dated 31.03.2008 is a forged and fictitious document. It is pertinent to mention there that applicant has not relied on upon the agreement to sell but has challenged it to be the forged and d fabricated document. The defendants have also admitted it to It to be a false and fictitious document. Therefore, agreement to sell is not relevant document at all to prove the case of the plaintiff. Neither the plaintiff has relied upon this document nor this document has been admitted to be a valid document by the defendants.

The agreement to sell has been recovered by



applicant, Smt. Saroj Devi from a box and when shown it to her Advocate she told her that it was an agreement to sell executed by Shri Achhar Singh in favour of defendants but before that time, applicant was not having knowledge of existence of any such document. The person who was having knowledge of execution of this document has already died and the applicants were not having any knowledge about this document nor they were present at the time of execution of document Therefore, they cannot say that this document was ever executed between the plaintiff, late Shri Achhar Singh and defendant no.1.

The applicants never knew that was prepared from the original and when it was made, who compared it with the original. In order to substantiate has been held that there his compared it with the plea the counsel for the respondent has relied upon. Amar Nath Vs. Bhagat Chand 2019(3) C.C.C. 665 H.P wherein it has been held has been held that there was no averment in the application that photo copy of agreement on record is made from the original when it was made who compared it. It was further held that loss of original agreement not with the provisions of section 65 of the Act.

As per the case of the plaintiff, it was only late Shri Achhar Singh who was having knowledge of this document. The applicants have taken the plea that since late Shri



Achhar Singh used to remain under the influence of liquor and due to that reason he had gone mentally weak and infirm but this plea of the plaintiff is falsified as the counsel for the defendant has produced on record the certified copy of statement of deceased plaintiff, Ext. DX recorded on dated 13.12.2011 in case titled as Rama Nand Vs. Sher Singh wherein the deceased plaintiff had already admitted that he is mentally fit and not suffering any disease or infirmity Hence, keeping in view that this document is not relevant being not relied upon by either of the parties, being not compared with the original and not proved to be the photo copy of the original and the fact that the plaintiff was not mentally weak and infirm at the time of filing of the, suit, therefore, cannot be allowed. Hence, same is hereby dismissed. Be tagged. Now to come up for evidence on additional issues, if any, for 04. 10 2019. Steps be taken within 15 days.”

10. Having heard learned Counsel for the parties and having perused the documents appended with the petition as well as the impugned order, this Court is of the considered view that there is no infirmity in the order passed by the learned Trial court. It is a matter of record that earlier also, an application was filed by the petitioners under Section 65 of the Indian Evidence Act to lead secondary evidence with regard to said very document which was dismissed by



the learned Trial Court. The revision petition against the dismissal order also suffered the same fate. Though subsequently, an application filed under Order 6, Rule 17 of the Code of Civil Procedure by the present petitioners to amend the plaint on the strength of this agreement to sell was allowed as a matter of intervention by this Court, as has been mentioned by me hereinabove, but fact of the matter still remains that the order passed by the learned Trial court dismissing the earlier application filed by the petitioners to lead secondary evidence qua the same document stood rejected which rejection stood confirmed by this Court, which order has attained finality.

11. Be that as it may, otherwise also, the order passed by the learned Trial Court dismissing the application therefore, cannot be termed to be perverse or not sustainable in law. Learned Trial Court has returned the findings that it was own case of the applicants that applicant Saroj Devi discovered the agreement to sell from a box and thereafter she made the same available for the perusal of her Counsel who told that this is a agreement of sell executed by Achhar Singh. Before this date, the applicants were not having any knowledge of existence of this documents and the person who purportedly was having knowledge of the document, was no more. Learned Trial Court also held that the applicants were not aware whether said document was prepared from the original, when



was it made and who compared it with the original. Learned Trial Court also held that in the present case, it was only late Achhar Singh, who was having knowledge of this document and the applicants had taken the plea that since Achhar Singh used to remain under the influence of liquor, therefore, due to this reason, he had got mentally weak and infirm, however, this plea of the applicants was falsified as counsel for the defendants had brought certified copy of statement of deceased-Achhar Singh on record Ext. D-X recorded on 13.12.2011, wherein the deceased-plaintiff had already admitted that he was mentally fit and not suffering from any disease.

12. During the hearing of this petition, learned counsel for the petitioners could not demonstrate that these findings returned by the learned Trial Court were either perverse or not borne out from the record of the case.

13. Furthermore, in terms of the provisions of Section 65 of the Evidence Act, a party can be permitted to lead secondary evidence inter alia when the original is shown or appears to be shown in the possession of power of a person against whom the documents is sought to be proved. In the present case, though the allegation of the applicants is that the original is in the possession of defendant but there is no iota of material on record to substantiate this bald contention of the applicants. Besides this, as per Section



65 of the Evidence Act, secondary evidence can also be allowed when the existence condition or contents of the original have been proved to be in writing by the person against whom it is proved. In the present case, the existence condition or the contents of the original have not been admitted by the defendants. Therefore, this provision of Section 65 of the Indian Evidence Act is also not attracted in this case. Therefore also the order passed by the learned Trial Court cannot be faulted with.

Accordingly, in view of above discussion, as this Court does not find any perversity in the impugned order, this petition is dismissed. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 28, 2025
(narender)