
(1999) 10 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 443 of 1998

Gurdial Kaur

APPELLANT

Vs

Registrar, Co-operative Society and Others

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Evidence Act, 1872 — Section 65

Citation : AIR 2000 P&H 82 : (2000) 1 CivCC 659 : (2000) 124 PLR 156 : (1999) 4 RCR(Civil) 632

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Tarminder Singh, for Malkiat Singh, Amit Jain, for Arun Jain and Satinder Khanna, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Gurdial Kaur instituted suit for permanent injunction restraining The Ludhiana Primary Co-operative Land Mortgage Bank, Ludhiana (hereinafter referred to as "the Bank") from recovering the alleged loan amount from her as she had never been paid the alleged amount of loan nor any tractor was delivered to her by M/s. Roy Tractors & Engineering Company, Ludhiana (hereinafter referred to as "the Company"). M/s Roy Tractors and Engineering Company, Ludhiana was liable to repay the loan amount to the Bank. It was alleged in the plaint that she approached the bank for advancement of loan for purchase of a tractor. She was told by the Manager of the Bank that the tractor could be supplied to her by the Company and for that purpose, she would have to deposit a sum of Rs. 16500/-with the bank as margin money which would be utilised towards the sale price of the tractor to be paid to the company and for payment of balance amount of the price of the tractor, she would be granted loan against the mortgage of her land. She was told that the company would supply her tractor on being instructed by them (Bank) and also get it registered from the Registering Authority.

Civil Revision No. 443 of 1998 .

Authority under the Motor Vehicles Act, Ludhiana in the name of the plaintiff. She deposited a sum of Rs. 16500/- with the Bank as proposed and also signed blank documents. Bank got her land mortgaged. She paid Rs. 5000/- to the Company on the advice of the Bank. Tractor was not supplied to her. On 16-7-87, she gave in writing to the Bank that she was not to purchase tractor and the amount of Rs. 16500/- be refunded to her and the amount of Rs. 5000/- deposited by her with the Company be also got refunded to her. She filed this suit when the Bank started recovery proceedings against her and a notice to this effect was received by her.

2. Company made an application to the learned trial Court whereby it prayed for permission to them to lead secondary evidence of receipts dated 6-10-1987 for Rs.15000/-; dated 24-10-1987 for Rs.10000/-; dated 26-10-1987 for Rs.15000/-; dated 29-10-1987 for Rs. 15000/- and dated 2-11-1987 for Rupees 15000/-. It was alleged in the application that these receipts got lost near District Courts, Ludhiana and notice to this effect was published in the Daily Rohjan, Ludhiana dated 15-5-90 but the Company had got photostat copies of these receipts attested from Bhag Singh Oath Commissioner, on 5-5-90. The said receipts were important piece of evidence and could be proved only if permission was granted to them to lead secondary evidence.

Civil Revision No. 443 of 1998

3. This application was opposed by Smt. Gurdial Kaur urging that no payment had been made to her and these receipts had been fabricated with the object of fastening liability on her. Loss of these receipts in the District Courts, Ludhiana was denied. Vide order dated 19-11-1997 Civil Judge (Junior Division) Ludhiana allowed the Company to lead secondary evidence of these receipts subject, however, to the proof of loss of original receipts.

4. Aggrieved from this order dated 19-11- 97 passed by the Civil Judge (Junior Division) Ludhiana, Smt. Gurdial Kaur has come up in revision to this Court.

5. I have heard the learned counsel for the parties and have gone through the records.

6. Learned counsel for the petitioner submitted that in the written statement filed by the Company, there is no mention of these receipts to have been executed by Smt. Gurdial Kaur.

7. Impugned order has to be set aside. Learned trial Court should have insisted upon the proof of the existence of the of original receipts and then loss thereof before it could allow the Company to lead secondary evidence thereof. Section 65 of the Evidence Act lays down cases in which secondary evidence may be given. "Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:--

(a) & (b) xx xx xx (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) to (g) xx xx xx

8. It was held in *Krishna Kumar v. Pal Singh* (1989) 95 PLR 55 that "it was incumbent upon the respondent to lead evidence to prove existence of the original will." Impugned order could not be passed without evidence to that effect had been led. "Learned trial Court could not have allowed the Company to lead secondary evidence without the Company having proved that original receipts had come into existence and they got lost after they had come into existence. Learned counsel for the petitioner submitted that when receipts had not been pleaded in the written statement, no permission to lead secondary evidence thereof could have been asked for. In *Gurditta v. Balkar Singh* (1989) 95 PLR 418 it was observed that "where agreement to sell was never pleaded in the written statement application to lead secondary evidence by way of photostat copy was filed after more than two years, there was no occasion for the trial Court to allow the defendant to lead secondary evidence particularly when the existence of the original document was not proved." It was held that the observations made by the trial Court that secondary evidence is allowed subject to his proving the due execution of the agreement and loss thereof was wholly irrelevant because the secondary evidence could be allowed only if the existence of the original document was proved in the first instance. In *Ved Prakash v. Smt. Kartar Kaur* (1994) 1 RRR 361 it was held that "in order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document."

9. In my opinion, learned trial Court should not have allowed the Company the permission to lead secondary evidence of the said receipts without the proof of the said receipts having been executed by Smt. Gurdial Kaur. So, this revision is accepted and the impugned order is set aside. Learned trial Court is directed to dispose of the prayer of the Company for leading secondary evidence after complying strictly with the provisions of Sections 63 and 65 of the Indian Evidence Act, 1872. Trial Court will also take account whether these receipts had been relied upon in the written statement and if they had not been relied upon what is the explanation for their not relying upon and whether that explanation is reasonably plausible.