

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CMPMO No. 215 of 2012.
Decided on: 28.3.2013.**

Shri Attar Singh and others.Petitioners.

Versus

Shri Bhup Singh and others. ... Respondents.

Coram

The Hon'ble Mr. Justice V.K. Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the petitioners. : Mr. V.D. Khidtta, Advocate.

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

V.K. Sharma, Judge (Oral)

The present petition under Article 227 of the Constitution of India arises out of order dated 16.3.2012, passed by the learned Civil Judge (Sr. Division), Court No.1, Paonta Sahib, in CMP No. 41/6 of 2012 in Civil Suit No. 124/1 of 2008, whereby the prayer of the petitioners herein, who are plaintiffs before the learned trial court, for grant of permission to lead secondary evidence under Section 65 of the Indian Evidence Act, 1872, has been declined.

2. Bereft of details facts necessary for disposal of the present petition are that in a suit for grant of a decree of declaration to the effect that the entry of tenancy in the revenue record in favour of the respondents (defendants) is illegal, false and fraudulent etc. and is inoperative on the rights of the plaintiffs and other co-sharers, with consequential relief of perpetual

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

prohibitory injunction restraining the respondents from interfering, trespassing, in any manner whatsoever, themselves or through their agents, servants and legal representatives with the suit land, a prayer for leading secondary evidence for proving documents, viz. order dated 7.12.1979, passed by the learned Assistant Collector 1st Grade, Renuka Ji, District Sirmaur, H.P., in case file no. 171/79, titled 'Chandanu alias Chandan Singh and others Vs. Jangli Ram and others', decided on 7.12.1979, statement of Shri Bhoop Singh (defendant No.1), dated 7.12.1979 and application/compromise deed dated 26.11.1979 in those proceedings, was made on the ground that the concerned official from the court of A.C. 1st Grade, Renuka Ji, District Sirmaur, H.P., who was called to prove these documents from the original case file, has stated that the said file has since been destroyed in accordance with Rules.

3. The prayer for grant of permission to lead secondary evidence was opposed by the defendants on the grounds that on the one hand they were not supplied copies of the documents sought to be proved by way of secondary evidence and on the other the plaintiffs were required to strictly prove the allegations contained in paras 3 to 5 of the application in accordance with law.

4. The learned trial court while declining the prayer for secondary evidence has taken note of the provisions of sub sections (e) and (f) of Section 65 of the Evidence Act, which read as under:-

“(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence.”

5. The learned counsel for the plaintiffs has laid emphasis on clause (c) of the said Section, which is extracted below:-

“(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.”

6. In the present case, it is, prima facie, proved that the case file, of which the aforesaid original documents formed part, has since been destroyed in accordance with Rules. However, it is stated that certified copies of those documents which were obtained when the file was in existence, have been proved in a collateral litigation titled ‘Attar Singh and others Vs. Jangli and others’, photocopies of which were retained at that time and are lying on the record of the learned trial court and copies of the same have also been brought on record in the present petition as Annexure P-6 (Colly.) at pages 29 to 36. Now the plaintiffs intend to summon the file of the said case titled ‘Attar Singh and others Vs. Jangli and others’ and intend to prove the aforesaid documents with the help of certified copies thereof lying in the said case file.

7. Per contra, it is submitted by the learned counsel for the defendants that production of the aforesaid documents even by way of secondary evidence would be of no consequence, as

the stand taken by the plaintiffs in those proceedings was that no one is in possession of the suit land, whereas the case set up by the plaintiffs in the present suit is that they are in possession of the suit land. It is further submitted that an earlier litigation filed by the plaintiffs against the defendants in respect of the suit land was ultimately decided pursuant to compromise between the parties.

8. I have heard the learned counsel for the parties and gone through the record.

9. The documents sought to be proved by way of secondary evidence are public documents, certified copies of which are lying in the aforesaid suit titled 'Attar Singh and others Vs. Jangli and others'. True it is that those certified copies cannot be taken out of that record to prove the same in the present suit, yet the fact remains that photocopies of those certified copies of the documents, which are in possession of the plaintiffs and have been brought on record of the learned trial court, can very well be permitted to be proved in secondary evidence by taking recourse to sub section (c) of Section 65 of the Evidence Act, as it is, prima facie, proved that the original documents have since been destroyed in accordance with Rules, for which the plaintiffs are in no way responsible. In this regard, I am fortified by a judgment of the Hon'ble Mysore High Court in ***Chikka Veerasetty Versus Nanjundachari and another, AIR 1955 Mysore 139***, wherein it has been laid down as under, vide para 6 of the report:-

“(6) That clause of S. 65 of the Evidence Act which provides that “in case of (e) or (f) a certified copy of the document but no other kind of secondary evidence is admissible” seems to apply to a case in which a public document is still

in existence on the public records, and that provision appears to have been intended to protect the originals of public records from the danger to which they would be subject by constant production of such documents in Courts in evidence, and the said clause does not interfere with the general rule of evidence given in clause (c) i.e., in cases where the original is destroyed or lost.

This is the view taken by the Madras High Court reported in – ‘Kalandan v. Kunhunni’, 6 Mad 80 (A). In that case, the original plaint was found to be destroyed and an uncertified copy of it was produced, and has been held to be admissible. In – ‘Hurish Chunder Mullick v. Prosanno Coomar Benerjee’, 22 Suth WR 303 (B), it has been held that even oral evidence with respect to an original document which is lost or destroyed is admissible if the Court is satisfied that the original has been lost, and that in such cases Courts need not insist on the production of a certified copy. Under these circumstances, I am of opinion that the order of the learned Munsiff cannot be supported.”

10. Since the defendants are yet to enter the witness box, they shall be at liberty to lead evidence based on the above submissions to counter the secondary evidence, which may be led by the plaintiffs in the present suit.

11. In view of the above, the petition is allowed. Consequently, the impugned order dated 16.3.2012 is quashed and the plaintiffs are permitted to lead secondary evidence under Section 65 of the Evidence Act to prove the aforesaid documents. The parties through their learned counsel are directed to put in appearance before the learned trial court on 22nd April, 2013. The requisitioned record be sent back forthwith so as to reach well before the date fixed.

12. In view of disposal of the main petition, CMP No. 924 of 2012 shall also stand disposed of.

(V.K. Sharma)
Judge

28th March, 2013.
(ksg)