

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.R. No. 33/2017

Reserved on: 17.08.2026

Decided on: 02.09.2026

Satya Devi & ors.

.....Petitioners

Versus

Shashi Pal & others

...Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the Petitioners: Mr. Karan Singh Kanwar, Sr. Advocate with Ms. Upasna, Advocate, for petitioner Nos. 1 to 4 and 6.

For the Respondents: Mr. Ashok K. Tyagi, Advocate, for respondent No.1.

Mr. Bharat Bhardwaj, Advocate, vice counsel for respondent No.14.

Romesh Verma, Judge

The instant petition arises out of order, dated 16.12.2016, as passed by the learned Civil Judge (Jr. Divn.), Nahan, District Sirmaur, H.P., whereby the application under the provisions of Section 65 of the Indian Evidence Act to lead secondary evidence qua Will, as filed by the plaintiff/respondent No.1, has been allowed.

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

2 Facts, as emerge in the present case, are that the respondent No.1/plaintiff filed a suit in the Court of learned Civil Judge (Sr. Div.), Nahan, District Sirmaur, for declaration to the effect that plaintiff, Shashi Pal and proforma defendant, Beena, are owners of the land comprised in Khata Khatauni No. 15/30, Khasra Nos. 107-11, 135/116, 104 and 105 measuring 10-15 Bighas, situated in Mauza Panjagar, Tehsil Nahan and the judgment and decree dated 29.09.1997 passed by the learned Senior Sub Judge District Sirmaur, at Nahan in Civil Suit No. 76/1 of 1990, titled as Amar Singh etc. vs. Raghubeer Singh etc. is null and void being a collusive decree obtained by exercising fraud upon the Court and the same does not affect the right, title and interest of the plaintiff and proforma defendant qua the suit land with a consequential relief of possession and permanent injunction restraining the defendants from alienating and creating any charge, encumbrance over the suit land.

3 As per the averments as made in the plaint, one Smt. Dwarka, Wd/o Late Sh. Bhagwan Singh was owner in possession of the suit land. She acquired the proprietary rights of the suit land under Section 104 of the H.P. Tenancy and land Reforms Act vide mutation No. 70. Smt. Dwarka executed a will in favour of late Sh. Virender Singh (father of plaintiff). After the death of Smt. Dwarka, father of plaintiff became owner in possession of

the suit land, which was duly recorded in the revenue record after the death of Dwarka vide mutation No. 84, dated 13.11.92. Sh. Virender Singh died on 10.10.1993 and after his death, the suit land was inherited by plaintiff and proforma defendant being his son and widow and thus they became owners in possession of the suit land in equal shares.

4 It was averred that at the time of death of Virender Singh, plaintiff was a child of one and half year and the proforma defendant was a young widow, who were harassed, threatened and even driven out of the village by the defendants. The plaintiff after attaining majority, when intended to take loan from the bank for starting his business, approached the concerned Patwari in the first week of August 2010 for procuring the revenue papers of the suit land, but he was surprised when he was told by the Patwari that the suit land has been mutated in favour of defendant Raghubeer Singh etc. vide mutation No. 92, dated 25.2.2006 on the basis of a decree dated 29.9.1997, as passed by the learned Senior Sub Judge, District Sirmaur, at Nahan in Civil Suit No. 76/1 of 1990, titled as Amar Singh etc. vs. Raghubeer Singh etc. After obtaining the entire records, the plaintiff came to know that Smt. Dwarka had filed a Civil Suit No. 11/1 of 89, titled as Dwarka vs. Amar Singh etc. for

injunction. Both the aforesaid suits were consolidated on 25.6.1992 and were tried together.

5 As per the plaintiff, during the pendency of the above said suits, Dwarka died and the plaintiffs in Civil Suit No. 76/1 of 1990 did not bring the real legal representative of deceased Dwarka on record i.e. Virender Singh, father of plaintiff, but fraudulently brought defendants No. 5 to 14 as legal representatives of deceased Dwarka through an application under Order 22 Rule 4 of CPC.

6 The said application was resisted by counsel of deceased Dwarka on the ground that the proposed legal representatives are not legal heirs, but one Virender Singh is the legal heir of deceased Dwarka on the basis of will executed by her in his favour, however counsel for the plaintiffs Sh. S.K. Attari, Advocate, gave statement that Virender Singh had no link or association or any kind of legacy with the deceased Dwarka and therefore on the basis of the statement of the learned counsel for the plaintiffs, name of proposed legal representative of Dwarka i.e Virender Singh was illegally deleted and other fake LRs i.e. defendants No. 5 to 14 were brought on record. The plaintiff requested the defendants in the last week of August 2010 to get the revenue entry corrected in his favour and

proforma defendant, but they refused to do so, hence, the aforesaid suit.

7 The said suit has been resisted by the defendants and all the averments as made in the plaint have been specifically denied and refuted. The defendants have defended the judgment and decree, which was passed by the learned Senior Civil Judge, District Sirmaur at Nahan, in Civil Suit No. 76/1 of 1990, titled as Amar Singh etc. vs. Raghubeer Singh etc. and sought dismissal of the suit, as filed by the plaintiff.

8 During the pendency of the suit, the plaintiff/respondent No.1 filed an application under Section 65 of the Indian Evidence Act read with Section 151 of CPC, stating therein, that in the earlier civil suit, titled as Amar Singh vs. Dwarka, fake LRs of Dwarka were brought on record and the real and genuine legal heir i.e. Virender alias Balinder, father of plaintiff was not brought on record, who had resisted the application being legal successor of Dwarka on the basis of will of Dwarka, but during pendency of suit, he also died and by bringing fake LRs on record, the said suit was compromised illegally. It was averred in the application that the plaintiff was neither in possession of the original will executed by Dwarka in favour of his father nor the same could be traced in spite of diligent effort and the plaintiff was under the bonafide belief that

the original will had been placed on record by his father in earlier suit. So for that purpose, the plaintiff summoned the original file of Civil Suit No. 76/1 of 1990, titled as Amar Singh vs. Raghubeer etc. decided by learned Senior Sub Judge, Dist. Sirmaur at Nahan on 29.09.1997 to prove the copy of order-sheets of earlier suit and the original will executed by Dwarka. However, during the course of evidence, it transpired that the original will of Dwarka was not on the said summoned court file and only photocopy was placed on record by father of plaintiff in the said suit. Therefore, a need has arisen to prove will by way of secondary evidence as the original will is not in possession of plaintiff nor the same could be traced by him in spite of diligent effort. The plaintiff prayed that he may be permitted to lead secondary evidence of the will of late Dwarka in favour of father of the plaintiff Virender alias Balinder.

9 The application, as filed by the plaintiff/respondent No.1, for leading secondary evidence, has been contested by the defendants/petitioners on the ground that Virender Singh was not the legal successor of deceased Dwarka on the basis of any will. As per the defendants/petitioners, there is no will in existence as alleged by the plaintiff/respondent No.1 nor Dwarka had executed any will in favour of Virender Singh and therefore,

claim of the plaintiff/respondent No.1 being false and wrong has been specifically denied.

10 The learned trial Court vide its order dated 16.12.2016 allowed the aforesaid application and the defendants/petitioners feeling dissatisfied, have approached this Court by filing instant petition under Section 115 of the CPC.

11 It is contended by Mr. Karan Singh Kanwar, learned Senior Advocate, assisted by Ms. Upasna, Advocate, for the petitioners that the impugned order, as passed by the learned trial Court, is erroneous and liable to be quashed and set aside. He has submitted that the provisions of Section 65 of the Indian Evidence Act are not attracted in the present case, therefore, the learned trial Court could not have allowed the application at hand in any manner. He has further submitted that after accepting the instant petition, the application, as filed by the plaintiff/respondent No.1, deserves to be dismissed.

12 On the other hand, Mr. Ashok K. Tyagi, learned counsel for the plaintiff/respondent No.1 has defended the impugned order and submitted that a well reasoned order has been passed by the learned trial court, which does not suffer from any illegality or infirmity, therefore, while invoking provisions of Section 115 of CPC this Court will not interfere with a well reasoned order.

13 I have heard the learned counsel for the parties and
have also gone through the material available on record.

14 Before delving into merits of the case, it is apposite to
explain the nature and scope conferred upon this Court under
Section 115 of the CPC and analyze whether this Court is
empowered to deal with the issues raised by the petitioners in
the instant case. The said provision reads as under:

“Section 115. Revision-

*[(1)] The High Court may call for the record of any case
which has been decided by any Court subordinate to such
High Court and in which no appeal lies thereto, and if such
subordinate court appears--*

*(a) to have exercised a jurisdiction not vested in it by law,
or*

(b) to have failed to exercise a jurisdiction so vested, or

*(c) to have acted in the exercise of its jurisdiction illegally or
with material irregularity, the High Court may make such
order in the case as it thinks fit:*

*[Provided that the High Court shall not, under this section,
vary or reverse any order made, or any order deciding an
issue, in the course of a suit or other proceeding, except
where the order, if it had been made in favour of the party
applying for revision, would have finally disposed of the
suit or other proceedings.] [(2) The High Court shall not,
under this section, vary or reverse any decree or order
against which an appeal lies either to the High Court or to
any Court subordinate thereto.] [(3) A revision shall not
operate as a stay of suit or other proceeding before the
Court except where such suit or other proceeding is stayed
by the High Court.] [Explanation.--In this section, the*

expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.]"

15 On bare perusal of the above provision, it is clear that the High Court can only interfere with the orders of the Subordinate Court if the court has committed illegality or material irregularity in exercise of its jurisdiction. It is imperative to note that under the revisional powers, this Court cannot attack the findings on the facts by the Subordinate Court and can only interfere if any infirmities are found with the exercise of jurisdiction of the Court and not when the courts erroneously decide the cases.

16 The primary object of the revisional powers conferred upon the High Courts is to prevent subordinate courts from acting arbitrarily, capriciously and illegally while they exercise their jurisdiction. The aspect related to the revisional powers given to the High Court has been extensively dealt with by the Hon'ble Supreme Court in a catena of judgments, whereby the Hon'ble Court discussed the meaning and scope of the said provision.

17 The Hon'ble Supreme Court in ***M/s D.L.F. Housing and Construction Company (P) Ltd., New Delhi vs. Sarup Singh and others, 1969(3) SCC 807***, has considered the provisions of Section 115 of CPC as follows:

“5. The position thus seems to be firmly established that while exercising the jurisdiction u/s 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this Clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this Clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power u/s 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision u/s 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in

this matter the High Court treated the revision virtually as if it was an appeal.

18 The Hon'ble Supreme Court in **Civil Appeal No.5622 of 2025, titled as P. Kumarakurubaran vs, P. Narayanan & others**, held as under:-

14. It is also to be noted that the appellant has categorically averred in the plaint that he executed the registered power of attorney in favour of his father solely for the limited purpose of constructing a house and carrying out related activities. There is no express clause authorizing his father to sell the suit property to any person without the appellant's consent and knowledge. Yet, the appellant's father executed a sale deed in favour of his granddaughter, going beyond the scope of the power of attorney, which raises serious doubt about misuse of authority and potential fraud. Such assertions cannot be rejected in the application under Order VII Rule 11 CPC. Accordingly, we are of the view that the plaint discloses a cause of action which cannot be shut out at the threshold. Thus, the trial Court acted within its jurisdiction in refusing to reject the plaint and in holding that the matter ought to proceed to trial. The High Court, while exercising its revisional jurisdiction under Section 115 CPC, ought not to have interfered in the absence of any jurisdictional error or perversity in the trial court's order. Rejecting the plaint where substantial factual disputes exist concerning limitation and the scope of authority under the Power of Attorney, is legally unsustainable."

19 Now, coming to the facts of the case, plaintiff/respondent No.1 has approached the learned trial Court

by instituting a suit for declaration challenging therein the judgment and decree dated 29.09.1997 as passed by the learned Senior Sub Judge District Sirmaur, at Nahan in Civil Suit No. 76/1 of 1990, titled as Amar Singh etc. vs. Raghubeer Singh etc. being null and void. As per the case of the plaintiff/respondent No.1, Dwarka had executed a will in favour of his father, Virender Singh since he had been rendering services to Dwarka during her life time. It is the case of the plaintiff that at the time of death of his father, he was only one and half year old, while proforma defendant, was a young widow, and they were harassed and driven out of the village by the defendants and since then, they have been staying at Dadahu.

20 During the pendency of the aforesaid suit, the plaintiff filed an application under Section 65 of the Indian Evidence Act on the ground that in the earlier civil suit, titled as Amar Singh vs. Dwarka, fake LRs of Dwarka were brought on record and the real legal heir Virender alias Balinder, father of plaintiff was not brought on record. As per the plaintiff/respondent No.1, even though his father had resisted the application on the ground that he is legal successor of Dwarka on the basis of her will, but during pendency of suit, he also died. It is further case of the plaintiff/respondent No.1 that he was not possessing the original will executed by Dwarka in

favour of his father and he was under the impression that the original will has been placed on record by his father in earlier Civil Suit No. 76/1 of 1990, titled as Amar Singh vs. Raghubeer etc.. However, when the plaintiff summoned the original file of aforesaid civil suit, to prove the copy of order-sheets of earlier suit and the original will executed by Dwarka, it came to his knowledge that the original will of Dwarka was not on the said summoned court file and only photocopy thereof was placed on record by father of plaintiff. Thus, the plaintiff/respondent No.1 submitted that a need has arisen to prove the will by way of secondary evidence as neither original will is in his possession nor the same could be traced by him in spite of diligent effort.

21 Section 65 of the Indian Evidence Act reads as under:-

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person

against whom it is proved or by his representative in interest;

(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) when the original is of such a nature as not to be easily movable;

(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;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

22 The learned counsel for the plaintiff/respondent No.1 has drawn attention of this Court to Section 65(C) of the Indian Evidence Act, which stipulates and allows the secondary evidence to be given when the original has been destroyed or lost, or cannot be produced for any other reason not arising from his own default or neglect of the parties.

23 In order to invoke Section 65 of the Evidence Act, a party must plead the foundation for the loss and strictly prove that the absence is genuine and free of personal fault. In the present case, it is contended by learned counsel for the plaintiff/respondent No.1 that as per provisions, as contained in Section 65(c) of the Act, despite due diligence, he could not trace the original Will as he was about one and half year at the time of death of his father and he was under bona fide belief that the original will has been placed on record by his father in Civil Suit No. 76/1 of 1990, titled as Amar Singh vs. Raghubeer etc. However, when the record of the aforesaid suit was summoned before the learned trial Court, it transpired that only a photocopy of the same has been placed on record and thereafter need arose to prove the will by way of secondary evidence.

24 As rightly submitted by the learned counsel for the plaintiff/respondent No.1 that the plaintiff has placed on record certified copy of the will purported to have been executed by Dwarka in favour of his father. Learned counsel for respondent No.1 has further submitted that once certified copy of the will has been placed on record, in common parlance the same is always given of the original by the Sub Registrar, therefore, the plaintiff has been able to establish the existence of the registered will in favour of his father.

25 As observed above, certified copy of the original will has been placed on record, therefore, contention of the learned counsel for respondent No.1 is valid, legal and correct that once the plaintiff has been able to establish that certified copy is on the case file, therefore, but obvious, said copy has been produced from the original will.

26 As far as first part of Section 65 of the Indian Evidence Act is concerned, that has been proved by the plaintiff. It is the case of the respondent No.1/plaintiff that being a minor at the time of death of his father, a compromise was effected in Civil Suit No. 76/1 of 1990 and he was under impression that his father may have placed on record original will in the said file, therefore, when summoned witness was cross-examined, it is only then it transpired that the said file contains only photocopy of the will. As per the case set up by the plaintiff, necessary mutation was also attested in favour of his father.

27 The learned trial court has rightly determined the point in controversy and has come to the conclusion that being son of late Virender Singh, in whose favour Dwarka had executed the will, in order to prove his case, instant application for leading secondary evidence has been filed and the plaintiff has

been able to establish and prove his case within the ambit of Section 65(c) of the Indian Evidence Act.

28 A Co-ordinate Bench of this Court in **CMPMO No. 235 of 2018**, titled **Sh. Amar Nath vs. Sh. Bhagat Chand, 2019 (2) SLC 972** has discussed provisions of Section 65 of the Act in detail, which read as under:-

“4. Relying upon the judgments rendered by the Hon’ble Supreme Court in cases of J. Yashoda Vs. K. Shobha Rani, (2007) 5 Supreme Court Cases, 730, M.Chandra Vs. M. Thangamuthu, (2010) 9 Supreme Court Cases 712, H. Siddiqui Vs. A. Ramalingam (2011) 4 Supreme Court Cases 240 & U. Sree Vs. U. Srinivas, (2013) 2 Supreme Court Cases 114, it can be concluded that secondary evidence in respect of an ordinary document can be allowed in case following requirements inter-alia amongst others are met :-

- i) For leading secondary evidence, non production of the document in question has to be properly accounted for by giving cogent reasons inspiring confidence.*
- ii) The party should be genuinely unable to produce the original of the document and it should satisfy the Court that it has done whatever was required at its end. It cannot for any other reason, not arising from its own default or neglect produce it.*
- iii) Party has proved before the Court that document was not in his possession and control, further that he has done, what could be done to procure the production of it.*
- iv) The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original.*

5. The record of the case clearly indicates that in the written statement, even the date of the agreement is not

mentioned. The written statement was filed on 18.06.2012. The matter was fixed for defendant's witnesses w.e.f. 22.11.2014. The application for leading secondary evidence was moved on 10.07.2017, five years after the filing of written statement. The reason for delay advanced by the petitioner/defendant that he came to know about the existence of only photocopy of the agreement in the court file, at the time of examination of defendant's witnesses, does not inspire confidence. From 22.11.2014, the matter was fixed for defendant's witnesses. The record of learned Court below demonstrates that statements of DW No.1, DW No.2,DW 7 No.3 had already been recorded on 20.12.2016. There is no reason forthcoming in the application, which sufficiently and cogently explains the delay in moving the application.

6. The requirements laid down under Sections 63 and 65 of the Indian Evidence Act for permission to lead secondary evidence are not met in the instant case. There is no averment made in the application that the photocopy of the agreement on the record is made from the original, when it was made and who compared it. The loss of the original agreement has not been accounted for in accordance with the provisions of Section 65 of the Indian Evidence Act. The application is bereft of the particulars, which are required for discharging the proof, required under Section 65 of the Indian Evidence Act.

7. Merely, a vague averment made in the application that the document has not been traced, is not sufficient to allow the application for leading secondary evidence. Therefore, no illegality can be found in the order passed by the learned Trial Court."

29 Another co-ordinate Bench of this Court in **CMPMO No. 322 of 2017**, titled **Sh. Raj Kumar and another vs. Sh. Milap Chand** **2025 (2) HLJ 929** held as under:-

“7. Coming back to the facts of the present case, a perusal of the application filed by the petitioners under Section 65 of the Indian Evidence Act demonstrates that the prayer therein was that the petitioners/plaintiffs may be allowed to lead secondary evidence by placing on record a Photostat copy of the agreement executed between the plaintiffs and the defendant dated 07.09.1992. It was averred in the application, which is appended with the petition as Annexure P-5 that at the time of the execution of agreement between the plaintiffs and the defendant on 07.09.1992, in respect of the sale of the suit land vis-à-vis which the suit for specific performance was filed by the plaintiffs, one photocopy of the agreement was made from the judicial paper i.e., carbon copy of the agreement as well as from the stamp paper copy. The photocopies were prepared for the petitioners and non-applicant was in possession of the original copy of agreement. The original copy of agreement dated 07.09.1992 was handed over to the defendant in the presence of the witnesses. Subsequently, defendant manipulated and with an intention to defraud the plaintiffs, he took possession of the carbon copy of the agreement by handing over the photocopy of the agreement to the plaintiffs. It was in this backdrop, that a prayer was made to lead additional evidence.

8. Thus, it is evident from the averments made in the application itself that the payer therein was to place a photocopy of the carbon copy on record and, as nothing was on record to suggest that the ‘Copy’ of which Mark-AX

itself was a photocopy was compared with the original document at any time, therefore, no perversity can be attributed to the order under challenge and the learned Court below rightly dismissed the application. Learned Court rightly held that in the given circumstances, permission as was being prayed by the petitioners to lead secondary evidence, could not have been granted, as grant of permission would have been in violation of the permission of Section 65 of the Evidence Act.”

30 Therefore, in the considered opinion of this Court once there was due diligence on the part of the plaintiff and appropriate steps were taken by the plaintiff by summoning official record of Civil Suit No. 76/1 of 1990 when it came to his notice that in the said record, there is only photocopy of the will, therefore, instant application under Section 65 of the Indian Evidence Act was filed.

31 As rightly pointed by the learned counsel for respondent No.1 that by merely allowing the application, case of the plaintiff will not be automatically proved and since the will has been set up by the plaintiff, therefore, will is required to be proved in accordance with the provisions of the Indian Evidence Act and Indian Succession Act. The petitioners/defendants shall get an opportunity to rebut the case of the plaintiff.

32 This Court is of the considered opinion that the learned trial court has passed a well-reasoned order, and it does not suffer from any illegality, perversity or jurisdictional error.

33 Consequently, in view of aforesaid exposition of law and discussion, the present petition, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

34 Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here-in-above, which are only for the purpose of the instant petition.

2nd September, 2026
(pankaj)

(Romesh Verma)
Judge