

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 2405 of 2015 (O&M)

Date of decision: 8.4.2015

Basti Ram and others

... Petitioners

VS

Smt. Rajesh

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Kulvir Narwal, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 26.3.2015 (Annexure P-11), passed by the learned Court below whereby the application filed by the petitioners for permission to lead secondary evidence to prove unregistered will, was dismissed.

Learned counsel for the petitioner submitted that mutation of the property in dispute was sanctioned in favour of the petitioners/defendants on 19.12.1981 on the basis of Will executed by late Bhateri, who died on 17.1.1979. The existence of the Will is proved from the fact that the same finds mentioned in the revenue record prepared at the time of sanction of mutation. As copy thereof is not available either with the petitioners or in the revenue record where the original thereof was submitted, the application was filed for permitting the petitioners to prove the same by leading secondary evidence. The same has been wrongly dismissed by the learned court below as contents of a document can be proved even by oral evidence even in the absence of the document. In the case in hand, the Will was scribed by the then Numberdar of the village, whose son was produced as a witness. He stated that he was present when the Will was got scribed by late Smt. Bhateri. Hence, in the circumstances even if a copy of the Will is not available, its contents can be proved by leading secondary evidence.

After hearing learned counsel for the petitioners, I do not find any merit in the submissions made.

It was not denied by the petitioners that there are no rules/ instructions issued by the Government for submission of original will at the time of sanction of mutation. In support of the plea that the original Will was submitted by the petitioners to the revenue authorities at the time of sanction of mutation way back in the year 1981, none of the officials was produced from the revenue department to prove this fact. They were not present when the Will was allegedly submitted. They only stated that normally it was submitted. The same cannot be taken to be a ground to hold the existence of the document. Once existence of the document is not proved, permission to lead secondary evidence cannot be granted. The witness, who has been produced by the petitioners in court is son of the Numberdar of the village, who allegedly scribed the Will. He claimed that it happened in his presence. He cannot be said to be the person in knowledge of the contents of the Will. Neither a copy of the Will is available nor even the date of execution thereof is known to the parties.

Under these circumstances, in my opinion, the learned Court below had not committed any error in declining permission to the petitioners to lead secondary evidence to prove the Will.

Accordingly, the petition is dismissed.

8.4.2015
vs

(Rajesh Bindal)
Judge