

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2648 of 2015

Date of Decision.22.04.2015

Ruldu Ram

.....Petitioner

Versus

Shanti Devi and others

.....Respondents

Present: Mr. S.C. Arora, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The plaintiff petitioner is aggrieved that the Court which had received a Will which is 30 years old, assigned it merely a mark and has not exhibited the same as a document. According to the plaintiff, the Will is of the year 1962 and the document must have been exhibited as evidence.

2. When a document is merely marked and not exhibited as evidence, the plaintiff still does not lose his right to argue that the document is required to be exhibited as evidence and place his argument before the trial Court at the time of final arguments and place reliance on the Will to the extent to which it is possible. I must observe now that there is a ruling of the Supreme Court in **M.B. Ramesh (D) by LRs Vs. K.M. Veeraje Urs (D) by LRs and others 2013(2) RCR (Civil) 932** that has dealt with the issue of applicability of the provisions of

Section 90 of the Evidence Act and the view of the Supreme Court is that

the presumption that could be raised for ancient documents as regards truth of execution and validity of attestation cannot be extended to Wills. The plaintiff may not be able to, therefore, gather any strength from the fact that the Will is old and therefore, no further proof is necessary and the document could be exhibited as evidence. The Evidence Act itself prescribes a procedure as to the manner of proof of a Will where the witnesses are not alive. Section 69 of the Evidence Act states that where no attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. The evidence must, therefore, be of some person who was acquainted with the signature of both the executant and one of the attestors. The plaintiff may adopt such appropriate course as it is legally possible and not merely complain that the Will has not been exhibited. He would require to render appropriate proof in the manner known to law.

3. There is nothing to be interfered with now in favour of the petitioner but the petitioner shall only be advised to take appropriate procedure which can protect his own interest. With these observations, the civil revision is disposed of.

(K. KANNAN)
JUDGE

April 22, 2014
Pankaj*