

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

C.R. No.2972 of 2015

Date of Decision.01.05.2015

Panj Peer Shiv Mandir Committee

.....Petitioner

Versus

General Public and another

.....Respondent

Present: Mr. Inderjit Sharma, 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 petitioner who sought for issuance of a probate through a petition under Section 276 of the Indian Succession Act gives evidence in support of the Will through the witnesses. The respondent, who had objected to the Will, had contended that the Will was false and fabricated. The respondent appears to have brought an expert evidence to contend that the Will was not genuine. After the examination of the respondents' witnesses, the petitioner has again filed a petition seeking for permission to examine the document through an expert and the Court has rejected it.

2. Learned counsel for the petitioner points out to me an issue which is framed by the Court below which read as under:-

"Whether the Will dated 14.08.2014 is forged and fabricated document ? OPR

According to him, since the burden of proof of the document being

fabricated is on the respondent, the petitioner must have a right of rebuttal. Now that the interim order passed in the proceedings pending before the Court below is challenged before me, I must observe that the Court was in error in putting the burden for proving the document as forged and fabricated on the respondent. If a person specifically pleads a forgery which only means that the genuineness of the document is put to test, then the burden of proving the document is on the person who propounds the same. No person who takes the plea that the document is a forgery would take upon himself the burden of proving the same. The issue framed by the court below which is reproduced above is erroneous and the issue framed is directed to be eschewed as wholly wrong. No burden of proof of disproving genuineness of a Will can ever be on the respondent. Section 68 of the Indian Evidence Act sets out a rule of evidence of placing the burden always on the person who propounds it whether there is a denial of the same or not. There is no way that the petitioner can imagine that the respondent will have to take the burden upon himself to prove that the document is forged and fabricated if the defence is so taken. Even without such a defence, the burden is always on the person who seeks for issuance of a probate. If he did not produce evidence in the affirmative of proving that the signature contained in the document was of the testator, he cannot seek for bringing an expert to prove the document after the respondents' evidence is concluded. After the respondent has brought the evidence, the plea of the petitioner was rightly rejected. I will find no reason for interfering with the same.

3. The civil revision is disposed of as above. The order copy is sent to the Court below with direction that the issue No.2 which has

been framed is removed from the issues framed by the Court below.

(K. KANNAN)
JUDGE

May 01, 2015
Pankaj*