

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

Civil Revision No.3276 of 2014 (O&M)

Date of decision:30.09.2015

Pooja

... Petitioner

versus

Sh. Ram Sarup Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Mahesh Dheer, Advocate,
for the petitioner.

Mr. Gurpreet Singh, Advocate, and
Mr. Susheel Gautam, Advocate,
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (*Oral*)

The plaintiff, who relied on a Will said to have been executed by her mother-in-law, was unable to produce the original Will at the trial. Her contention was that it was lost and a copy had already been filed along with the plaint. The plaintiff also wanted to rely on a copy of the Will made from out of the copy maintained by a Notary Public. The court rejected the application filed by the plaintiff for reception of secondary evidence on the ground that the copy made from out of the copy cannot be secondary evidence. The

view is correct. However, if the plaintiff says that she had lost the original Will and she has a copy other than one drawn by the Notary Public and the copy in her hand which was filed along with the plaint was a copy from the original, on a statement made by her that the original was missing, the court was bound to receive the same, since the foundation for reception of secondary evidence under Section 65 of the Evidence Act was made out. Mere exhibition of the document cannot amount to proof of what the law requires under Section 65 of the Evidence Act. The correctness of the version of the plaintiff can be tested in the cross-examination and the court will examine the admissibility and the extent of reliance that is possible along with the other issues while delivering the judgment. The defendant is entitled to contend that the plaintiff was not telling the truth and that she never had any Will or if there was a Will, it was not true; or if it was true, it was suspicious. The defendant will not be barred from taking any of the defences regarding the genuineness or the justification proffered by the plaintiff for production of secondary evidence and the court will adjudge on the same in the manner referred to above. The order already passed is set aside and the revision petition is ordered but subject to the above observations.

(K.KANNAN)
JUDGE

30.09.2015
sanjeev