

229.

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

Civil Revision No.3351 of 2014 (O&M)

Date of decision: 15.12.2015

Harjinder Singh

... Petitioner

versus

Ranjit Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mandeep Singh, Advocate,
for Mr. Amit Dhawan, Advocate,
for the petitioner.

Mr. Liaqat Ali, Advocate,
for respondents 14 to 16.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The revision petition is against a rejection of a plea to tender secondary evidence of a Will dated 04.02.1999 said to be in the custody of the 5th defendant-Harbhajan Singh. The plaintiff had filed copy of the Will for acceptance and pleaded that his inability to secure the original was on account of the refusal of the 5th defendant to produce the document in spite of an application moved in that regard.

2. The court went into an elaborate discussion of how the contention that the original was lost could not be true and referred to

a so-called artificiality of the contentions that the original Will was in the hands of the 5th defendant. In the manner of rejecting the application, the court was literally giving an elaborate discourse of how the Will could not be true.

3. The Judge has done a gross injustice by pronouncing about what he thought was unnatural and how the copy of the Will could not be directed to be produced even before allowing for a party to give evidence of the circumstances under which the Will was said to have been written. It is absolutely essential that a Presiding Officer keeps himself abreast of law, for, it is his grasp of law of fundamental rules of procedure that can allow for a smooth progress of trial. The courts provide Judges with enough legal resources to equip themselves and even software applications are made available for a Judge to keep track of the latest developments in law. We still see in several judgments, subordinate courts referring to the judgments of various parts of India without knowing views of its own High Court to which it is subordinate. There is nothing inherently wrong in keeping the mind open to allow for knowledge to come from all directions but if it is closing its own window of knowledge by not knowing what its High Court itself was stating on issues of trial, it will only give rise to half baked judgments, the way it has happened in this case. It is a complete travesty of justice that the Judge would be deciding on whether

secondary evidence could be admitted or not by elaborate consideration, the way it was done before the commencement of the trial and allowing for cross-examination of witnesses on what was stated in the affidavit.

4. It has been held through several decisions of this court and particularly in the decision in **Anupam Gupta Versus Smt. Kulwant Gupta and others in Civil Revision No.2991 of 2012, decided on 09.03.2015** that there is no need to even file an application for reception of secondary evidence. This law has been stated in a string of decisions, see: **Simar Pal Singh Versus Hakam Singh-2009(2) PLR 562; Dr. S.P. Arora Versus Satbir Singh-2010(5) RCR (Civil) 350; Harbans Kaur and others Versus Beant Kaur and others-2014(9) RCR (Civil) 3009 and Rajesh Yadav and others Versus Balbir Singh and others- 2014(5) RCR (Civil) 941.**

Section 65 of the Evidence Act itself enacts a rule of procedure that secondary evidence could be adduced on anyone of the grounds set out under said Section. If the person states that a document is missing or lost or in the custody of the adversary or any other ground mentioned in the said Section, it must be taken that a ground is made for reception of secondary evidence. This could be done at the time when the document is tendered and when the chief-examination is given by way of affidavit. It will be open to the opposite side to make a searching cross-examination of the party

who tendered secondary evidence and elicit any reason that can dislodge an inference that the circumstances so exist for production of secondary evidence or the document produced does not satisfy the definition of secondary evidence under Section 63 of the Evidence Act.

5. It has been laid down in several decisions of the High Court that a mere exhibition of a document in evidence cannot amount to proof of the document. A proof of document is different from a document being tendered in evidence in court. This distinction was laid down as early as in the decision in **Sait Tarajee Khimchand Versus Yelamarti Satyam-1972(4) SCC 562** and also spelt out in a later judgment in **LIC of India Versus Ram Pal Singh Bisen-2010(4) SCC 491**. The Supreme Court also set out in yet another case in **Bipin Shantilal Panchal Versus State of Gujarat-AIR 2001 (SC) 1158** that the court will evolve new procedures which will prevent needless obstruction in the course of trial. It shall not unnecessarily subject itself to needless burden by passing elaborate orders in the course of trial which will themselves be incentive for any person interested in causing obstruction to move to higher forums and cause the trial to be stopped. If any issue requires a detailed consideration on matters of evidence or whether a document is to be admitted or not, it shall receive it subject to objection and take up adjudication along with all other issues. In a

case where a Will is brought by the plaintiff on the basis of which a suit is laid, the trial will obtain no meaning if even the secondary evidence is not allowed when the plaintiff declares that the original is missing. It will be a complete denial of justice for a court to prejudge that the plaintiff cannot produce even the secondary evidence which is another way of saying that the court will not take up the decision on merits and summarily reject the plaint. If the court only allows the whole trial to go even without affording to the party his right to produce the document on the basis of which suit is filed, it will be an utter waste of judicial time. It will be perfectly all right that the court ultimately takes a decision that the loss of original was not proved or the custody in the other party was not established and the secondary evidence could not be received. It ought to be an adjudication along with all other issues and cannot prejudge a validity of the Will itself.

6. The order passed is untenable and it is set aside. It is most desirable that judges keep track of the march of law and keep themselves abreast with law and will not render judgments against several decisions rendered in this regard.

7. The impugned order is set aside and the revision petition is allowed.

(K.KANNAN)
JUDGE

15.12.2015
sanjeev