

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 4535 of 2014
Date of Decision: 12.3.2015.**

Champa Wati and others

.....Petitioners

Versus

Gulshan Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. P.S.Sikand, Advocate
for the petitioners.

Mr. D.S.Adlakha, Advocate
for respondents No. 1 to 3.

None for respondents No. 4 to 8

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 29.4.2014 (Annexure P-1) whereby application moved by the petitioners to prove the registered Will dated 25.3.1981 by leading secondary evidence, was dismissed.

Learned counsel for the petitioners has submitted that the Will dated 25.3.1981 was a registered Will. In fact, on the basis of the said Will, later Will dated 9.9.1992 had been executed by Sumitra Devi. Will dated 25.3.1981 was executed by Krishan Lal in favour of his wife Sumitra Devi. The original Will dated 25.3.1981 was not in possession of the petitioners. Therefore, they wanted to prove the same by leading secondary evidence.

Learned counsel for respondents No. 1 to 3, on the other hand, has opposed the petition and has submitted that the Will dated 25.3.1981, was not in possession of the said respondents. The learned Trial Court had rightly dismissed the application moved by the petitioners to prove the Will dated 25.3.1981 by leading secondary evidence.

Respondents No. 1 to 3 filed suit for declaration that they be declared owners in joint possession of the land in question and further they have sought declaration to the effect that the Will dated 25.3.1981 and Will dated 9.9.1992 were illegal, null and void and were not binding on the rights of the plaintiffs.

During the course of arguments, it has transpired that the application moved by the petitioners to enable them to prove the Will dated 9.9.1992 by way of secondary evidence, was allowed by the Trial Court.

Learned counsel for the petitioners has submitted that due to inadvertence, the counsel for the petitioner could not seek permission at that time to prove the Will dated 25.3.1981 by leading secondary evidence.

The Will in question dated 25.3.1981 is a registered Will. The said Will was allegedly executed by Krishan Lal in favour of Sumitra Devi and later, Sumitra Devi executed Will dated 9.9.1992. The genuineness of both the Wills dated 25.3.1981 and 9.9.1992, have been challenged by the plaintiffs-respondents No. 1 to 3. In these circumstances, it would be just and expedient and in the interest of justice that in case petitioners are permitted to prove the Will dated 25.3.1981 by leading secondary evidence, as it is the case of the petitioners that they are not in possession of the

original Will, and it is also the case of respondents No. 1 to 3 that they were not in possession of the original Will dated 25.3.1981.

Accordingly, this petition is allowed. Impugned order dated 29.4.2014 (Annexure P-1) is set aside. Consequently, the application Annexure P-6, moved by the petitioners, is allowed and the petitioners are allowed to prove the Will dated 25.3.1981 by way of secondary evidence.

**(SABINA)
JUDGE**

March 12, 2015
Gurpreet