

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

**Civil Revision No.6899 of 2015 (O&M)
Date of decision: 19.12.2015**

Vijay Gandhi

.....Petitioner

Versus

Upasna and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 29.09.2015 (Annexure P-10) passed by the Civil Judge (Junior Division), Faridkot, whereby application filed by defendant No.2-petitioner for de-exhibition of document Ex.P3 i.e. Will dated 16.09.2009, has been dismissed.

Respondent No.1-Upasna daughter of Harish Gandhi filed a suit (Annexure P-3) for declaration to the effect that she is owner of land measuring 191 Kanals 14 Marlas, as detailed in head note of the plaint (Annexure P-3) on the basis of a registered Will dated 16.09.2009, executed by Shri Hari Chand Gandhi during his lifetime with consequential relief restraining the defendants from disposing of the aforesaid land by any mode of transfer either themselves or through their attorney. Present petitioner has been arrayed as defendant No.2 in the suit and after appearance, he had filed his written statement dated 21.09.2012 (Annexure P-4). Thereafter, on the basis of pleadings of the parties, issued were framed vide order dated 19.11.2012 (Annexure P-5). The plaintiff-respondent No.1 filed an application dated 23.01.2014 (Annexure P-6) seeking permission to prove the Will dated 16.09.2009 by way of secondary evidence as the original Will had been lost. On notice, learned counsel for the defendants had given a statement that the defendants had no objection if the

said application is allowed. In view of the statement, the plaintiff was allowed

to lead secondary evidence. During the course of evidence, Rajinder Kumar, Deed Writer appeared as PW-3 on 18.10.2014 and tendered his examination-in-chief by way of affidavit (Annexure P-7), wherein the Will dated 16.09.2009 was exhibited as Ex.P3. Thereafter, defendant No.2-petitioner filed an application (Annexure P-8) for de-exhibiting Ex.P3 i.e. Will dated 16.09.2009, which was contested by the plaintiff-respondent No.1 by filing a reply dated 01.09.2015 (Annexure P-9). Trial Court vide order dated 29.09.2015 (Annexure P-10) dismissed the said application. Hence, this petition.

The sole ground for de-exhibiting the Will dated 16.09.2009 was that Rajinder Kumar, Deed Writer, who had appeared as PW-3 could not prove the said Will as per the provisions of Section 68 of the Indian Evidence Act and Section 63 of Indian Succession Act. At least one witness of the Will was required to be examined to prove the same. In support of his contentions, learned counsel for the petitioner has referred to the judgments passed by the Hon'ble Supreme Court as well as this Court in S.R. Srinivasa Vs. S. Padmavathamma, 2010 (5) SCC 274, Kulwant Kaur Padda Vs. State Bank of Patiala, 2011 (5) PLR 738 and Jasjit Singh and another Vs. Prem Harjit Singh and another, 2013 (1) RCR (Civil) 514.

Relevant part of the statement made by Rajinder Kumar, Deed Writer (PW-3) while tendering his examination-in-chief, is reproduced as under:-

“PW3

Statement of Rajinder Kumar Deed Writer, Kotkapura. Without oath.

I produce my duly sworn affidavit Ex.PW3/A which is correct and be read as part of my statement. I have seen original Will dated 16.03.2006 Ex.P1 which was scribed by me. Ex.P2 is the entry of the register regarding Will Ex.P1. I have seen the Will in the register produced by PW2. It was scribed by me. Ex.P3 is the certified copy of the said Will dated 16.03.2009 and entry of the Will in my register is Ex.P4 which is correct according to the original.

XXX by Sh. Jatinder Bansal, Advocate.

Deferred.”

As per the above statement, the Deed Writer had merely stated that he had scribed the original Will, Ex.P1, and Ex.P2 was the entry in the register regarding the Will Ex.P1. The register had been produced by PW-3 and the Will in question had been scribed by him. After the examination of Rajinder Kumar, Deed Writer (PW-3), there was no ground to de-exhibit the document. The Will in question was a registered document. A perusal of the order dated 18.10.2014 (Annexure P-7) shows that one Harmeet Singh, Registration Clerk, was present in the Court along with the relevant record, but counsel for the defendant sought an adjournment on the ground that the record was required for cross-examination of other witnesses.

Since the evidence of the plaintiff was in progress, the document could not be de-exhibited as the plaintiff-respondent No.1 was in the process of proving the same in accordance with law. The judgments referred to above by learned counsel for the petitioner are not applicable to the facts of the present case, as the Rajinder Kumar, Deed Writer (PW-3) in his examination-in-chief, has only admitted that he has seen the Will, which was scribed by him and Ex.P2 was the entry in his register regarding the Will. Before conclusion of the evidence of plaintiff, the document could not be de-exhibited.

In view of the above, no ground is made out to interfere in the impugned order (Annexure P-10).

Dismissed.

19.12.2015
ajp

(RITU BAHRI)
JUDGE