

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

CR No. 6864 of 2013 (O&M)
Date of decision: July 6, 2015

Balbir Singh Chahal

...Petitioner

Versus

Sukhdev Singh and others

...Respondents

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?**

Present: Mr. Prateek Mahajan, Advocate,
for the petitioner.

K. KANNAN, J. (Oral)

1. The revision is against the order declining permission to the petitioner to offer secondary evidence of a will on the basis of which the plaintiff has filed a suit. The suit is between the brothers and the claim is in respect of the estate of the father, who purported to have executed a will by distributing the properties amongst his sons equally. The defence now entered by the defendants, who are brothers of the plaintiff, admitting to the execution of the first will propounded by the plaintiff but contend that there was a subsequent will which was the disposition that has altered the manner of distribution of the estate.

2. The plaintiff has called upon the defendants to produce the will which the plaintiff has propounded on a plea that the document is now in the defendants' custody. The defendants have denied the same. The plaintiff has therefore, sought for production of the certified copy and for

summoning the register from the Registrar's office, containing the details of the entry of the will. The court has declined the relief and hence the revision petition.

3. The order passed by the court below is erroneous. The justification for production of secondary evidence is set forth under Section 65 of the Evidence Act. Section 65 clause (b) of the Evidence Act allows for production of a secondary evidence if the existence, condition or contents of the original had been proved to be admitted in writing by the person against whom it is proved or by his representative. I have already observed that the defendants have admitted the existence of the first will but would contend that it was superseded by a subsequent will executed by their father. This may not dispense with the necessity of proof of the will in the manner contemplated under Section 68 of the Evidence Act, in view of the fact that the said provision gives a rule of evidence that any document not being a will, if it is admitted need not be proved. By inference, if it is a will even if it is admitted it would require to be proved by calling at least one attester to the will to speak about the attestation. The production of secondary evidence by itself ought not to be, therefore, taken as proof of the will. The plaintiff has given the basis for production and that ought to have been allowed. The denial of such a right is erroneous. The impugned order is set aside and the revision is allowed, permitting the production of secondary evidence and for proof to be made in accordance with law.

4. The revision is allowed.

July 6, 2015
prem

(K.KANNAN)
JUDGE