

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

CR-7939-2015 (O&M)
Date of decision: 28.11.2015

Jai Lal and another

...Petitioners

Versus

Smt.Santra Devi and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.RA Sheoran, Advocate for the petitioners

SNEH PRASHAR, J.

The present revision petition under Article 226/227 of the Constitution of India is for setting aside the order dated 7.11.2015 (Annexure P-5) passed by learned Civil Judge (Senior Division), Rewari vide which, the application filed by defendant No.1 for leading secondary evidence with regard to Will was allowed.

A suit for declaration and permanent injunction had been filed by the petitioners-plaintiffs against the respondents-defendants claiming to be owners in possession of 1/4th share in the suit land and the Will bearing vasika No.336/3 dated 12.11.1999, executed in favour of respondent No.1- defendant and mutation No.970 sanctioned on the basis of the said Will, to be declared null, void

and not binding on their rights.

The respondents contested the suit. After the petitioners concluded their evidence and respondents were in the course of producing their evidence, respondent/defendant No.1 moved an application for leading secondary evidence with respect to the impugned Will dated 12.11.1999 pleading that the original Will had been stolen by someone.

The application was opposed by the petitioners but vide the impugned order dated 7.11.2015, the application was allowed by learned Civil Judge (Senior Division), Rewari. Aggrieved by the said order, the petitioners have filed the instant revision petition.

The submissions made by learned counsel for the petitioners have been heard.

Learned counsel for the petitioners submits that prior to filing the application seeking permission to prove the impugned Will by way of secondary evidence, the respondents had examined HRC of the Office of Deputy Commissioner, Rewari, who appeared with the summoned record relating to the impugned Will and proved the certified copy of the same. Subsequently, the respondents came up with the story of theft of the original Will, which at the face of it is false. Had the original Will been in existence and in possession of the respondents, they would not have got a certified copy of the

document proved by summoning the record available in the Office of Sub Registrar. Infact, the Will was neither produced alongwith the written statement nor when the witness was examined. The Daily Diary Report alleged to have registered by the respondents in respect of theft of the Will is also false because while the theft of the Will is alleged to have taken place outside Bus Stand, Rewari the report was lodged at Police Station Model Town, Rewari. Had the story of theft been true, the DDR should have been got registered at Police Post Bus Stand, Rewari.

Admittedly, it is the plea of respondent No.1 that the Will was stolen from his possession. He got a Daily Diary Report registered in respect of the theft at Police Station Model Town, Rewari. The objection that the factum of theft was not reported at Police Post Bus Stand, Rewari is of no consequence at this stage. Learned trial Court has rightly observed that certified copy of the Will is available on the file and from the relevant DDR produced by the respondents, *prima facie* it is apparent that the original Will has been lost. The existence of the original Will was in the knowledge of the petitioners also as they had challenged the same by way of present suit. The onus to prove the document- Will is on the respondents and since they allege that the original Will has been stolen away, it was legal and judicious to allow them to produce the

secondary evidence in respect of the document for proper, complete and effective adjudication of the case.

Thus, there being no illegality or perversity in the impugned order warranting intervention, the present petition being devoid of merit is dismissed in limine.

28.11.2015
gsv

(SNEH PRASHAR)
JUDGE