

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

Civil Revision No.911 of 2015 (O&M)

Date of decision: 23.03.2015

Beant Kaur

... Petitioner

versus

Gurlabh Singh (deceased, through his LRs) and another.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

Mr. Dalel Singh, Advocate,
for the respondents.

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 defendant, who contested the plaintiff's suit that was with reference to the estate of Smt. Lal Amol Kaur, filed application at the fag end of the trial for reception of the original of the Will alleged to have been executed by the Smt. Lal Amol Kaur. The trial court has also framed additional issue, namely, whether the Will registered on 08.07.2008 is valid and cast the onus of proof on the defendant. When DW1 was brought by the defendant as a witness only a certified copy of the Will had been produced. It would seem that the defendant had filed only photocopy of the Will and the

plaintiff had sought for production of the Will and the court had also ordered its production by its order dated 02.04.2007. Apart from the photocopy, the defendant was said to have also produced for the “original copy of the Will” (sic). The lower court observed that the counsel for the plaintiff stated at the bar that he did not press his application for production of the document, but the defendant would be liable to produce the same in court at the time of evidence of the plaintiff. Admittedly, the original was not produced so long as the plaintiff's side was closed. When the evidence to the Will was examined as DW1, again he had only made reference to Ex.D1 which was the copy of the Will exhibited but the original was not filed. When DW2-the defendant was examined, he made a reference to the copy of the Will already brought on record as Ex.D1. He claimed that he had brought the original with him on the day of evidence. Curiously, the court had observed that the original was seen and returned. The trial Judge also did not concern himself that if there was an original document which he was making reference to, he should exhibit only the original and should not have returned it to the party.

2. Much could be said about both parties and the Presiding Officer. The party did not know that the original alone could be filed and produced as exhibit and a copy cannot be produced otherwise than under the circumstances mentioned under Section 65 of the

Evidence Act. The Presiding Officer allowed the defendant to take back the Will and after the side was closed, the defendant woke up to the situation that the original had not been filed at all. He has, therefore, filed a petition that the original has been omitted to be produced and he was producing the same. The plaintiff justifiably took objection that the document could not be produced at the belated stage and it would amount to filling up a lacuna. This objection prevailed at the trial Judge and he dismissed the offer for production of the original.

3. I may only observe that the non-production of original Will even when it was available was only a case of ignorance than the contumacious conduct. The fact is that the original had been produced when the plaintiff was asking for its production before the settlement of issues and it was recorded by the court itself and he has framed the issue allowing for the document to be brought again at the time when the plaintiff was examined. Again the document was produced before the court when the defendant was examining herself as DW2. The court has seen the original and recorded it as such and returned the same to the party. This would show that the defendant was not shying away from its production but was not guided properly for its production at the right time.

4. There appears to be also some other reason as to why the original was not produced. In respect of the same estate, the

defendant was conducting, two different suits instituted against her, one at the court at Kurukshetra (Haryana) and another at the court at Nabha (Punjab). She could not have produced the original in both courts and perhaps, she was caught in a dilemma. The non-production surely entailed a delay in proceedings and for the indiscretion or the inconvenience of the party for non-production at the time when it ought to have been produced, the reparation ought to be a direction for payment of costs. We have not learnt the lessons yet, in spite of statutory amendment in CPC requiring under Order 8 Rule 1 that all the documents, which the defendant makes reliance on, are bound to be produced along with the statement. This is more observed in breach than in practice. Even the provision under Order 13 Rule 2 CPC is removed from the Code that enabled the parties to file documents belatedly. The removal of the provision was to sensitize the parties that the documents on which reliance was placed by the party must be filed along with the respective pleadings and cannot be permitted to be brought later. This must be observed with greater seriousness at least in respect of lynchpin instruments, the proof of which are very crucial. As regards Wills, even the rules of evidence are strict in requiring witness to be brought and proof to be tendered, even in the absence of express denial, by virtue of Section 68 of the Evidence Act.

5. I will not let the indiscretion and ignorance of the party to be punished more than awarding some costs against the defendant. The defendant shall pay ₹15,000/- as costs to the plaintiff for production of the original Will belatedly. The order already passed is set aside and the original Will is directed to be received and exhibited as evidence on the side of the defendant. The evidence of DW1 and DW2 may be permitted to be recalled only for the purpose of eliciting the fact of whether DW1 was a witness to the said document and whether DW2 was having the custody of that document. The plaintiff will have a right of cross-examination and may also press for such inferences for the delayed production as the law may enable the plaintiff to urge at the time of trial and arguments. The cost must be paid before the resumption of the trial.

6. The civil revision is allowed on the above terms.

(K.KANNAN)
JUDGE

23.03.2015
sanjeev