

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2109 of 2016 (O&M)

Date of Decision.21.03.2016

Kulwinder Kaur and another

.....Petitioners

Vs.

Karan Singh and others

.....Respondents

Present: Mr. Anuj Balian, Advocate
for the petitioners.

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?

-. -

K. KANNAN J. (ORAL)

1. The revision petition is against the order receiving photocopy of the Will as secondary evidence. The petitioner has stated at the time of production of the copy that the original is in the custody of the defendant and that he was, therefore, producing the copy of the Will. The defendant's contention before the court below was that nowhere in the plaint was it stated that original Will was in the custody of the defendant and such an attempt is made only for the purpose of petition. It is also not spoken as to how the document constitutes a secondary evidence and when a copy was taken from the original.

2. The issue of whether any of the circumstances exist for production of secondary evidence as required under Section 65 of the Indian Evidence Act is matter of evidence and it is not matter of pleading. If the matter is pleaded, it is well and good and if it is not, it should be taken as coming within Order 6 Rule 2 CPC that allows for

party to bring in evidence matter which is not essentially requisite for pleading. If that pleading is there through an application filed by the party at the time when secondary evidence is led or at the time of tendering evidence in Court, that ought to be taken as sufficient. The correctness or otherwise of the assertion that the original is in the hands of the defendant must be tested in the cross-examination and cannot be pre-judged by the Court. The receipt of the document is, therefore, competent.

3. The further contention that the document is not shown to be the secondary evidence of the original by appropriate evidence must also be matter of evidence under Section 63 of the Indian Evidence Act that sets out a procedure of how the document will obtain the character of secondary evidence and if such evidence is given, the Court will receive it and if the appropriate evidence of the procurement of copy from the original is not available, the Court will discard the evidence and eschew the document which is produced before the Court. The matters which are issues at the trial and what would come by the adjudication of the Court cannot be brought through the civil revision petition.

4. I will make no interference with the order already passed. The civil revision petition is dismissed but with the above observations.

(K. KANNAN)
JUDGE

March 21, 2016
Pankaj*