

Civil Revision No.4503 of 2016

-1-

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4503 of 2016

Date of Decision: 6.9.2016

Malook Singh and others

---Petitioners

versus

Nasib Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Jagdish Manchanda, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition has been directed against order dated 7.5.2016 (Annexure P-3) whereby application for secondary evidence to prove Will No. 89 dated 15.2.2008 by producing a certified/attested copy obtained from the office of registering authority has been allowed.

The petitioners have filed a suit for declaration, possession and permanent injunction to assail Will dated 15.2.2008 purported to be executed on 25.1.2008 by Sukha Singh since deceased in favour of Nasib

Singh, defendant No. 1. Nasib Singh filed the instant application for permission to adduce secondary evidence to prove the Will in question on the premise that the Will executed on 25.1.2008 and registered on 15.2.2008 was attested by Mahinder Singh son of Saudagar Singh resident of village Pipli Majra, Tehsil Pehowa, District Kurukshetra. The original Will was in custody of Mahinder Singh but now relations of the applicant with Mahinder Singh are not cordial due to which Mahinder Singh has not produced the original Will in the Court when summoned to produce the same. It is further averred that certified copy of the original Will from the office of Sub Registrar, Ismailabad District Kurukshetra is required to be produced and proved.

After filing of reply by the petitioners and having heard counsel for the parties, the application was allowed.

Counsel for the petitioners has submitted that Mahinder Singh was examined as a witness by the petitioners and he has denied execution of any such Will by deceased Sukha Singh. He has further denied his being in possession of the original Will when examined as a witness by the respondents/defendants. It is further submitted that as Mahinder Singh has denied his being custodian of the Will, plea of the respondent/defendant to

prove the Will by way of secondary evidence does not fall within the ambit of Section 65 of the Indian Evidence Act. In support of his contention, he has referred to judgments of this court **Bhajan Singh vs. Smt. Jaswant Kaur 1996(1)RRR 738, Sampat Singh vs. Bhagwanti and others 2010 (5) RCR(Civil) 74.** Further reference has been made to **Tukaram S. Dighole vs. Manikarao Shivaji Kokate 2010(1) RCR(Civil) 950.**

I have heard counsel for the petitioner, perused the paper book particularly the impugned order.

Before advertng to the submissions made by counsel for the petitioner, I would like to deal with the judgments relied upon by counsel for the petitioners. The judgment in ***Bhajan Singh's case (supra)*** does not deal with the question of proving a Will by way of secondary evidence. In ***Sampant Singh's case (supra)***, it has been held that certified copy of the Will is not a public document within the meaning of Section 74 of the Indian Evidence Act and is not admissible per se in evidence. Thus, the certified copy cannot be presumed to be primary document which could be produced in evidence and the same could have been proved only while leading secondary evidence after taking permission of the Court and proving the loss, destruction etc. of the said document. The Hon'ble

Supreme Court of India in *Tukaram S. Dighole's case (supra)*, has held that document must be proved by primary evidence and secondary evidence is not admissible until the non production of primary evidence is satisfactorily proved.

Reverting to the case at hand, Malook Singh and others (petitioners herein) have filed the suit and challenged registered Will dated 15.2.2008 (executed on 25.1.2008 but registered on 15.2.2008) purported to be executed by Sukha Singh since deceased. As the petitioners themselves have initiated the litigation to assail the Will in question, it can be safely construed that there is no dispute between the parties with regard to existence of the Will in question. As per plea of respondent No. 1, the original Will was in possession of Mahinder Singh, his uncle and relation of the respondent with Mahinder Singh are no longer cordial and for that reason Mahinder Singh has not produced original Will in the Court. Plea of the respondent with regard to relations between Mahinder Singh and him having gone sour is prime facie made out from the fact that Mahinder was examined as a witness by the petitioners/plaintiffs and he has denied execution of the Will by Sukha Singh or attestation of the Will by him. As has been noticed hereinbefore, there is no dispute between the parties with

regard to existence of the registered Will. The same has been sought to be proved by obtaining certified copy thereof from the office of Sub Registrar. If the respondent is not permitted to prove the Will by way of secondary evidence, case of the petitioners would automatically be accepted as the law imposes an obligation upon propounder of a Will to prove the same in accordance with the provisions of the Indian Evidence Act. In the given facts and circumstances, I do not find any error much less illegality in the impugned order permitting the respondent to prove the registered Will by way of secondary evidence.

For the foregoing reasons, the petition fails and the same is accordingly dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

6.9.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No