

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6357 of 2016 (O&M)

Date of decision:22.11.2016

Amardeep Singh

... Petitioner

Vs.

Sham Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Baljinder Singh, Advocate
for the petitioner.

Mr. Deepak Aggarwal, Advocate
for respondent No.5.

AMIT RAWAL J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order dated 06.09.2016, whereby, an application moved under Section 65 of the Indian Evidence Act, for proving the registered Will dated 08.06.1982 by way of secondary evidence, has been declined.

Mr. Baljinder Singh, learned counsel for the petitioner-plaintiff submits that the Court should not have dismissed the application in a manner and mode indicated above, particularly when the Will, aforementioned is registered one, at least, should have given an opportunity to prove its existence and loss, thereafter was required to form an opinion in this regard and thus, urges this Court for setting aside the impugned order.

Mr. Deepak Aggarwal, learned counsel for respondent No.5 submit that the order under challenge is perfectly legal and justified. It is the plaintiff, who has to establish the case. There is not pleading with regard to loss of the Will, therefore, story projected in the application is coined one

and thus, submits that present revision petition may be dismissed with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Baljinder Singh, for, the Will, aforementioned is registered one. Before commenting upon the merit and de-merit of the application, the Court below is required to embark upon the path of giving a chance to the person asserting right to lead evidence by way of secondary evidence *vis-a-vis* its existence and loss. Until and unless, the essential ingredients of Section 65 of the Indian Evidence Act, are not complied with, it cannot be inferred whether the application is based upon some fraud or *mens rea*. This aspect has not been examined by the Court below.

Accordingly, the order under challenge is set aside. The application is revived with a direction to the trial Court to decide same afresh in view of the aforementioned observations made qua existence and loss of Will.

Revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 22, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No