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

CR-6347-2013

Date of decision : 09.02.2016

Ramesh Kumar

...Petitioner

Versus

Phool Singh (deceased through LRs) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Chahal, Advocate
for the petitioner.

Mr. S.S. Nara, Advocate
for respondent Nos.1 (i) and (ii).

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?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.13 is aggrieved of the order dated 24.09.2013, whereby the application for re-examination of DW-1 & DW-2, the witnesses of the Will dated 23.07.1999 alleged to have been executed by Chinto Devi, has been dismissed.

Mr. J.S. Chahal, learned counsel appearing on behalf of the petitioner submits that the aforementioned witnesses by leading the evidence in affirmative did mention about the Will, but inadvertently, the Will was not produced or exhibited and, therefore, the fault is on the part of the learned counsel and for this, the petitioner-defendant No.13 could not be made to suffer the loss. In

support of his contentions, he relies two judgments of the Hon'ble Supreme Court in **"Rafiz and another V/s Munshi Lal and another" AIR 1981 SC 1400** and **"Himalayan Cooperative Group Housing Society V/s Balwan Singh" 2015(7) SCC 373.**

He further submits that the trial Court has tread on path as if the Will is already on record whereas the testimony of the aforementioned witness does not disclose that the Will has been produced on record, thus, the order is not sustainable.

Mr. S.S. Nara, learned counsel appearing on behalf of the respondents No.1(i) & (ii), submits that the trial Court has rightly observed that despite Will being on record, the petitioner-defendant No.13 failed to put the question to the aforementioned witnesses, much less, exhibit the Will, and therefore, the application in hand was nothing, but tantamount to filling up the lacuna and rightly so, the application has been dismissed.

I have heard the learned counsel for the parties and appraised the paper book and also gone through the statements of DW-1 & DW-2 and finds that the affidavit submitted by way of examination-in-chief does not disclose the exhibition of the Will, though there is a reference of the Will, thus, the finding rendered by the trial Court that the Will is already on record, is wholly misplaced. These are only two witnesses of the Will who can exhibit the Will none-else. Once, the aforementioned witnesses have not placed on record the Will by duly exhibiting the same, no other witnesses can do the same. There is no force in the arguments made by Mr. S.S. Nara that the Will is already on record. Had it

been so, it would have been mentioned in the statements of the aforementioned witnesses. The suit of the respondent-plaintiff is unnecessarily delayed as the impugned order has been passed in 2013.

Shorn of the facts as noticed above, I am of the view that the application deserves to be allowed as party should not be made to suffer for the lapse of the counsel. In order to lend support to the aforesaid view, I rely upon the judgments of the Hon'ble Supreme Court in **Rafiz's case (supra)** and **Himalayan Cooperative Group Housing Society's case (supra)**.

Keeping in view the peculiar facts and circumstances, I am of the view that one opportunity is granted to the petitioner-defendant No.13 to re-examine the witnesses of the Will and the respondents-plaintiffs shall be entitled to cross-examine the aforementioned witnesses, much less, rebut in accordance with law.

With the aforementioned observations, the impugned order dated 24.09.2013 dismissing the application, is hereby set aside and the application is allowed.

Accordingly, the revision petition stands allowed.

09.02.2016
yogesh

(AMIT RAWAL)
JUDGE