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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6827-2015

Date of Decision : January 22nd, 2016

Kashmir Kaur

.... Petitioner

Versus

Baj Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. S.K.Arora, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 5.8.2015 [Annexure P/1] passed by Civil Judge [Junior Division], Ferozepur vide which permission to lead secondary evidence so as to prove the Will dated 16.4.1986 has been allowed.

2. Relevant facts of the case for the purpose of decision of this petition; that the plaintiff filed a suit for declaration that the plaintiff and defendants No.1 and 4 are the co-sharers to the extent of 1/3rd share each in the suit land measuring 66 Kanals 19 Marlas. During the pendency of the suit, application for leading secondary evidence so as to prove the Will dated 16.04.1986 was filed by the defendant taking the

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plea that the said Will was executed by Boor Singh in favour of Gurdeep Singh and Hardip Singh. The same was not traceable. However, the original Will was produced before the revenue officials and on the basis of the same, mutation was sanctioned in favour of the defendant. Photocopy of Will dated 16.4.1986 was produced before the Court.

3. Present petitioner as plaintiff contested the said application, taking the plea that the application for secondary evidence was not maintainable as there was no pleading that the original Will has been lost. The original Will was not produced in the Court despite Court order.

4. Learned Court below after considering the entire controversy passed the order dated 5.8.2015 which is under challenge in this revision petition.

5. Learned counsel for the petitioner while assailing the order dated 5.8.2015, *inter alia*, took the plea that the written statement was filed on 14.9.2012 and at that stage, plea was not taken that the original Will dated 16.4.1986, executed by Boor Singh in favour of Gurdeep Singh and Hardip Singh was not traceable. Thereafter, there is no evidence that how the Will was lost. As per the petitioner, the Will has been forged after the death of Boor Singh and the same does not bear genuine thumb impression of Boor Singh. Thereafter, the petitioner had moved the application for issuance of directions to defendants No.2 and 3 to place on record the said Will, but the defendants failed to produce the said Will rather, moved the application. The said application is not maintainable and the application was to be dismissed, but the Court below accepted the application and the impugned order is liable to be set-aside.

6. Having considered the facts relevant for the purpose of decision

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of this petition, this Court is of the view that the Court below rightly took the view that the application for secondary evidence was maintainable. As per the provisions of Section 65 of the Indian Evidence Act, 1872, secondary evidence can be allowed to be led where the original document has been lost. The relevant Section 65(c) reads as under:-

“65. Cases in which secondary evidence relating to documents may be given. — Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

a) & b). xx xx xx

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

$$Xx \qquad \qquad \qquad xx \qquad \qquad \qquad xx$$

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

7. In the case in hand, the applicant-defendant has come with the plea that the original Will has been lost somewhere. Earlier the said Will was produced before the revenue authorities at the time of sanctioning of mutation. The applicant was well within his right to move application for leading secondary evidence to prove the said Will.

8. As regard to the contention of learned counsel for the petitioner that there is no evidence regarding loss of the original document. There cannot be any such evidence regarding loss of the document and the holder of such a document can only take a plea that the document has been lost somewhere and that has been done by the applicant-defendant in the present case.

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9. In view of the above, there is no illegality in the order dated 5.8.2015 and the present petition stands dismissed *in limine*.

(SHEKHER DHAWAN)
JUDGE

January 22nd, 2016
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