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

**CR-7335-2015 [O&M]**  
**Date of Decision : June 1<sup>st</sup>, 2016**

Mohinder Kaur and another

.... Petitioners

Versus

Kulwinder Singh and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

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|--------------------------------------------------------------------------|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not?                               |     |
| 3. Whether the judgment should be reported in the Digest?                | Yes |

Present Mr. Sherry K. Singla, Advocate,  
for the petitioners.

Mr. Arun Bansal, Advocate,  
for the respondents.

**SHEKHER DHAWAN, J.**

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 8.10.2015 [Annexure P/7] whereby application filed by the defendants No.1 to 3 for leading secondary evidence so as to prove the Will dated 10.02.1994 was allowed.

2. The plea taken by the applicants/respondents was that on the date fixed i.e. on 29.7.2015, Sikander Singh and Gurjant Singh appeared as DW-1 and DW-2 respectively and the said Will was available at the time of recording their examination-in-chief. However, their cross-examination

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was deferred for 29.08.2015. On that date, cross-examination could not be done and the case was adjourned to 3.9.2015. On 3.9.2015, a plea was taken that on 20.8.2015 when the witnesses were returning home, the bag containing the original Will and some other documents fell down from the motorcycle and were lost somewhere and defendants got DDR lodged at Police Station, Talwandi Sabo and they be allowed to prove said document by way of leading secondary evidence.

3. Learned counsel for the petitioners – plaintiffs took the plea in the present petition that the grounds taken by the respondents are not believable. More so, the version of the defendants and witnesses produced by them on 29.7.2015 by way of examination-in-chief is already on the file with the averments that the Will was seen by them and same is exhibited as Ex. D1. The same cannot be allowed to be proved by way of secondary evidence and the Court below has not considered these facts while passing the impugned order and the present petition be accepted and the order dated 8.10.2015 be set-aside.

4. Learned counsel for the respondents submitted that the Court below has rightly decided the application because the original document was lost and matter was reported to the Police by lodging DDR and thereafter the respondents moved the application for leading secondary evidence. The Court below has rightly allowed the said application and the present petition be dismissed being devoid of any merit.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that as is the case set-up before the Court below, the original Will was in fact available and the same

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was produced in the Court and was exhibited as Ex.D1 as per statement of defendants and their witnesses. However, cross-examination could not be completed on 29.7.2015 and the same was deferred. Unfortunately, the said Will was lost on 20.8.2015 as the bag containing the same and some other documents fell down from the motorcycle on which the witnesses were returning home and the matter was reported to the Police. In the given circumstances, the respondents were certainly left with no alternative but to move an application for leading secondary evidence and the Court below has rightly allowed the said application as per provisions of Section 65(c) of the Indian Evidence Act, 1872. Needless to mention that while accepting the application for leading secondary evidence, considering the fact that the original Will was available on 29.7.2015 and thereafter the same was lost, the Court below was conscious enough to observe that the petitioners would be given due opportunity to cross-examine the witnesses on all material points including actual loss of original Will.

6. In view of the above, there are no grounds for setting aside the impugned order and the present revision petition stands dismissed.

**(SHEKHER DHAWAN)**  
**JUDGE**

**June 1<sup>st</sup>, 2016**  
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