

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

**CR No.7460 of 2013
Date of Decision-19.09.2016**

Kuljeet Singh and another	... Petitioners
Versus	
Dharam Singh and others	... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Garg, Sr. Advocate with
Mr. Sundeep Kumar, Advocate for the petitioners.
Mr. R.D. Bawa, Advocate for respondent No.1.
Mr. Pritam Saini, Advocate for respondent No.8.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 27.09.2013 passed by Additional Civil Judge (Senior Division), Batala vide which application filed by the petitioners for secondary evidence was dismissed.

[2]. Petitioners filed an application under Section 65 of the Evidence Act on the ground that Surjit Kaur widow of Harnam Singh executed Will dated 15.12.1998 in favour of defendants No.1 and 2. Mutation was also sanctioned on the basis of Will, but the Will was not traceable. The application was filed for producing secondary evidence.

[3]. The said application was contested by the plaintiff on the ground that Will was not relied upon by the defendants in the written statement and Will was forged and fabricated document.

[4]. The trial Court held that the secondary evidence relating to Will of Surjit Kaur cannot be allowed because Will was not produced on record. Will was not a registered document and therefore, its existence was also doubtful. Number of mutation was not mentioned on the basis of which same was sanctioned. The Will was never relied upon by the defendant even in the written statement. On the aforesaid premise, trial Court rejected the prayer vide order dated 27.09.2013.

[5]. I have heard learned counsel for the parties.

[6]. Learned counsel for the petitioners vehemently submitted that petitioners are the legal representatives of defendant No.1. Will dated 15.12.1998 was sought to be proved by way of secondary evidence as photocopy was also produced on record. The trial Court had commented upon the application on factually incorrect premise.

[7]. Perusal of written statement would show that four paragraphs were totally dedicated to the Will in question. The registration or unregistration of Will would be a question to be gone into by the trial Court at a relevant stage. The execution and genuineness of the Will are the issues which are not to be commented upon at this stage of the litigation.

[8]. On 15.09.2014, following order was passed by this Court:-

“In terms of the order passed by this Court on 25.8.2014, the trial Court has sent a report through letter No.1320 dated 23.8.2014 and also attached with it a copy of Will dated 15.12.1998 and marked it as DI.

Learned counsel for the petitioners submits that he had averred in para 4 of the written statement that Surjit Singh had executed a valid Will in favour of defendant Nos.1 and 2 on 15.12.1998 and as such, her estate had devolved upon them. The defendants when filed an application under Section 65 of the Indian Evidence Act,1872 in order to prove the said Will dated 15.12.1998 by way of secondary evidence, the trial Court has observed that neither the Will is pleaded in the written statement nor the same has been produced on record.

Learned counsel for the petitioners submits that the trial Court has erred in reading the document available on record inasmuch as there is a specific averments in para 4 of the written statement with regard to the existence of the Will as stated by the defendants and a copy of the Will has also now been sent by the Court below to this Court on 23.8.2014, which though may be a photocopy.

Notice of motion for 10.11.2014.

To be heard along-with C.R.No.2973 of 2014.”

[9]. Having considered the controversy, this Court finds that the application should have been allowed. Impugned order was passed on factually wrong premise inasmuch as that in the written statement, the factum of Will was elaborately pleaded, rather major portion of the written statement was dedicated to the factum of Will. Photocopy of the Will was already on record. The validity,

genuineness or otherwise of the Will in terms of execution and nature of document whether registered or unregistered will also be gone into by the trial Court at appropriate stage. At this stage, no such finding can be recorded.

[10]. In view of aforesaid, the impugned order dated 27.09.2013 passed by the trial Court is required to be set aside. This revision petition was also ordered to be tagged with the main controversy arising out of CR No.2973 of 2014 titled as Kuljeet Singh Vs. Dharam Singh and others. Vide order dated 16.09.2016, said revision petition has been decided. Since the controversy involved herein is slightly different than the controversy involved in the aforesaid revision petition, therefore, this revision petition was segregated from the aforesaid bunch of four revision petitions and is being decided in the manner as mentioned above.

[11]. For the reasons mentioned aforesaid, this revision petition is accepted. Impugned order dated 27.09.2013 passed by the trial Court is hereby set aside.

(RAJ MOHAN SINGH)
JUDGE

19.09.2016

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Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No