

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

CR No. 1258 of 2017 (O&M)

Date of decision :06.06.2017

Vineet Kumar

....Petitioner

V/s

Rekha Rani & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate for the petitioner.

Mr. Parminder Singh, Advocate for respondent no. 1.

RAJAN GUPTA J.

Present revision petition is directed against the impugned order 12.12.2016 passed by trial court. Vide said order, the court has permitted respondent no. 1-Rekha Rani to lead additional evidence. It has been urged before the court by Mr. Aggarwal, learned senior counsel that the matter earlier came up for hearing before the coordinate Bench (Paramjeet Singh, J) wherein three tests were laid down for disposal of the application under section 65 of the Evidence Act. The court below had to act in accordance with the said judgment but it failed to do so. Thus, according to him, assertion of one of the party is not sufficient to prove the foundational fact that original document existed. Prayer has been opposed by learned counsel for respondent no. 1. He contended that existence of the Will in question has been admitted by the plaintiff himself. Besides, there were probate proceedings before the competent court in Delhi wherein this fact had come on record. Trial court has arrived at its conclusion on the basis of sufficient evidence lead before it. Thus, present petition is misconceived.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It appears plaintiffs filed a suit claiming title and possession over the suit property being legal heirs of one Krishan Lal. They sought a decree for declaration that sale-deed dated 26.05.2009 executed by defendants no. 2 & 3 in favour of Rekha Rani (defendant no. 1) as well as Will dated 23.11.1981 stated to be executed by Krishan Lal in her favour were null and void and not binding on them. They also sought a declaration to the effect that they were owners to the extent of half share in the house and sought to injunct the defendants from alienating the same. Defendants refuted the claim. They stated that Will dated 23.11.1981 was a genuine one and sale-deed dated 26.05.2009 has been executed in favour of defendant no. 1 on the basis of said Will. Besides, probate petition no. 358/88 was instituted in Delhi court on 05.12.1999 on the basis of Will dated 23.11.1981. File of said case was inspected but original Will was found missing therefrom. Thus, a certified copy was obtained by defendant no. 1. According to them, no fault can be found with the order passed by the court below. As the defendants wanted to lead secondary evidence in respect of Will dated 23.11.1981, they moved application before the trial court. Same was dismissed vide order dated 07.02.2013. Said order was impugned before this court in Civil Revision No. 1011 of 2013. Plea was accepted. Revisional court set-aside the order passed by trial court. Operative part of the said order passed by coordinate Bench (Paramjeet Singh, J) reads as under:-

“In the case in hand, the photostat copy of the alleged Will is sought to be produced by way of secondary evidence. It is pertinent to mention here that sale deed has been executed on the basis of alleged Will, however, without appreciating the

said fact, the trial Court has dismissed the application on the only ground that case of probate proceedings have not matured and has been adjourned sine die. Proper opportunity has not been afforded to the petitioner to lay down foundation for leading secondary evidence. In view of above, the impugned order dated 07.02.2013 (Annexure P-6) is set aside. The petitioner-defendant no.1 would be afforded an opportunity to lead evidence to prove existence and loss of the alleged Will dated 23.11.1981 and plaintiffs shall also be afforded an opportunity to rebut it. Thereafter, the trial Court shall decide as to whether the photostat copy of the alleged Will should be admitted as secondary evidence. Its probative value shall be independently assessed by the trial Court in accordance with the settled principles of law.”

The court also laid down certain principles for ascertaining the probative value of a photostat document which a party seeks to produce by way of secondary evidence. Matter was remitted to the court below for further proceedings. Number of witnesses were examined before the trial court to prove existence of the Will in question. On the basis of evidence of AW1 to AW6 and DW1 to DW6, it gave findings about the existence of the Will. Thereafter, defendant Vineet Kumar appeared as AW2 and deposed that original Will had been lost and same could not be found despite best efforts. Trial court, thus held that secondary evidence regarding Will dated 23.11.1981 may be led. However, probative value of the same be examined at the time of arguments. I find no infirmity with the order. Sufficient exercise has been done by the court below to arrive at appropriate conclusion about the existence and loss of Will dated 23.11.1981. It appears petitioner is filing repeated revision petitions to thwart the attempts of the defendants to prove Will in question. This court had dealt with the matter at

accordance with the judgment and allowed the defendants to lead secondary evidence. Petitioner has again approached this court to impugn the said order on wholly frivolous grounds. He has also referred to some judgments in support of certain hyper technical pleas raised by him. This court does not find any necessity to deal with the same as it has already arrived at a conclusion that there is no infirmity, legal or otherwise, with the order passed by court below. The tendency of the petitioner to protract the litigation by raising frivolous pleas needs to be discouraged. Petition is, thus, dismissed with ₹30,000/- as costs.

June 06, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No1