

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2235 of 2011 (O&M)
Date of Order: 01.12.2017

Kamal Kishore

..Petitioner

Versus

Darshana Rani and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.Singla, Advocate,
for the petitioner

Mr. Malkeet Singh, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral)

Plaintiff-petitioner is in revision petition against the order permitting defendant no.1 to prove the will while leading secondary evidence.

Defendant no.1 had filed an application for leading secondary evidence by making following assertions:-

“2. That the original Will dated 24.04.2004 has been lying in the case file bearing No.168/C/SDM, date of institution 10.08.2004, decided on 13.12.2004, mutation no.10250 and 10477 of the estate of deceased Davinder Kumar, which was decided by the Court of S.D.M., Phillaur.

3. That the application summoned the record of the above said Will, but the record keeper of the record room of the Court of SDM Phillaur stated that the

original court file has sent to the Court of DC Jalandhar along with original file including Will. Accordingly, the applicant summoned the record from the office of D.C. Jalandhar along with file of the court of SDM Phillaur referred above. Accordingly the record keeper of ADC office, Jalandhar bring the original file of ADC court, Jalandhar with regard to the appeal of the above said mutation, but he stated that this original file of SDM Phillaur has been sent back to the record room of SDM Phillaur. Further more the applicant has also summoned original mutation along with record sanctioned on the basis of Will in question and the concerned officials of ADC Jalandhar also stated that original Will is not lying with the original mutation or of any other record of mutation of their office. Hence the original file along with original Will is not traceable. It is presumed to be lost. Therefore, it is beyond the approach of the applicant to bring the original Will before this Hon'ble Court. Therefore, non-production of the original Will before this Hon'ble Court is not intentional, but due to the reasons fully mentioned above.

3. That owing to the circumstances fully referred above, the applicant wants to prove the contents of the Will dated 24.04.2004 in question by way of secondary evidence. Copy of Will is attached here with and the

applicant may be allowed to prove the contents of the Will by way of producing the photo copy of the Will which was prepared from the original Will.”

Learned trial Court after considering the various aspects of the matter, allowed the application subject to proof of loss and existence of the original Will in question.

I have heard counsel for the parties at length.

Counsel for the petitioner-plaintiff has submitted that photocopy of the Will cannot be permitted to be lead in secondary evidence.

In the considered opinion of this Court, such argument is wholly untenable. It is well settled that photocopy of the Will which ensures accuracy can be permitted to be produced as a secondary evidence.

Learned counsel for the petitioner has placed reliance on the judgment passed by the Hon'ble Supreme Court in 1975 AIR (SC) 1748 titled as **Ashok Dulichand versus Madhavlal Dube and another.**

A careful reading of the aforesaid judgment, proves that the Hon'ble Supreme Court of India has not held that photostat copy of a document cannot be as a absolute rule be permitted to be lead in secondary evidence. It would always depend upon facts and circumstances of the case. It is for the party seeking to produce photostat copy as secondary evidence to prove that it is a correct copy of the original document. Subject to proof of the same, photostat copy of a document is admissible as secondary evidence of the document in view of Section 63(2) of the Evidence Act, having been prepared by mechanical process. Reference in this regard can be made to a judgment passed by this Court in Civil Revision No.4913 of

2008, decided on 23.08.2013 titled as *Prem Lala versus Dwarka Parsad and others.*

In view thereof, the revision petition is dismissed.

December 01, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No