

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CR No. 1740 of 2017
DECIDED ON: MARCH 10, 2017

VIJAY KUMAR

....PETITIONER

VERSUS

ASHA RANI AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Impinder Singh Dhaliwal, Advocate
 for the petitioner.

JASPAL SINGH, J

Challenge in this revision petition preferred by Vijay Kumar under Article 227 of the Constitution of India, is to the order dated February 03, 2017 (Annexure P-5), vide which an application seeking permission to lead secondary evidence in respect of Will dated August 04, 1975, has been allowed.

While assailing the impugned order, it has been contended by learned counsel for the petitioner that the same is absolutely against the settled canons of law. Earlier, respondent No.1 moved an application seeking direction to the petitioner to produce Will dated August 04, 1975 but the petitioner has specifically denied the said fact. It was only, thereafter, respondent No.1 moved an application before learned trial Court seeking permission to lead secondary evidence in respect of alleged Will. Thus, the impugned order is

illegal and arbitrary.

He further contended that the learned trial Court while passing the impugned order has failed to appreciate that earlier respondent No.1 filed a suit for permanent injunction restraining the petitioner from alienating the property in suit without getting the same partitioned in the month of May 1990 and in the said suit, no reference of the Will dated August 04, 1975, alleged to have been executed by Bhagwan Singh, was made. In fact, the Will in question is a forged and fabricated document. Not only this, even, learned trial Court has ignored the fact that the petitioner has specifically denied the existence of Will referred to above in the statement as well as in reply to the application. Once a document itself is forged and fabricated, it cannot be allowed to be proved by way of secondary evidence. Thus, the impugned order being not sustainable in the eyes of law deserves to be set aside.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioner and has scrutinized the impugned order but finds that impugned order does not call for any interference by this Court being absolutely in consonance with the legal proposition applicable to the facts and circumstances of the case in hand.

It is the specific stand of respondent No.1 that during his life time her father Bhagwan Singh, executed a registered Will dated August 04, 1975 and after his demise, the said Will came in possession of petitioner/defendant. Earlier, a direction was sought by respondent No.1 to the petitioner for the production of Will referred to above but in reply thereto, he denied its existence as well as possession. But mere denial is not suffice to decline the permission to prove the Will by way of secondary evidence, which is a registered one.

Petitioner is none else but a real brother of respondent No.1. A copy of Will has already been placed on record by respondent No.1. Thus, the impugned order is perfectly legal and valid and calls for no interference by this Court.

In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, it stands dismissed.

MARCH 10, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*