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

**Civil Revision No.3182 of 2015
Date of Decision: 08.11.2017**

SWAMI MAHESHWARA NAND

.....Petitioner

Vs

PURNA NAND AND ORS

....Respondents

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

Present: Mr. Narinder S. Lucky, Advocate
for the petitioner.

Mr. Malkeet Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 16.04.2015 passed by the Addl. Civil Judge (Sr. Divn.) Kapurthala vide which application under Section 65 of the Evidence Act was allowed at the instance of respondent No.1 and permission to adduce secondary evidence was allowed.

[2]. Brief facts are that the photostat copy of Will dated 14.07.1996 was sought to be adduced by means of secondary evidence. The said Will was executed in favour of defendant No.2/respondent No.1. As per pleadings in the application, due

to multiplicity of litigation, the original Will was tagged with some revenue record which was not traceable at the relevant stage. The tendering of photostat copy of the same has been objected to in respect of admissibility, validity and legality of the document.

[3]. Learned counsel for the petitioner submitted that there is no foundation in the pleadings and the evidence beyond pleadings cannot be looked into.

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

[5]. It is a settled position of law that mere exhibition of document does not dispense with proof of execution. The proceedings in terms of Section 65 of the Evidence Act are in the form of enquiry. The application can be allowed subject to proof of existence and loss of the document at a later stage. Leading of secondary evidence is like an enquiry for proving existence of a document or loss thereof. Granting leave to lead secondary evidence does not mean that the document has been admitted in evidence, nor it will provide a finding in respect of existence of any condition incorporated in Section 65 of the Evidence Act.

[6]. At the most, it amounts to holding an enquiry regarding existence of a document and its loss in certain conditions.

Failure or success to prove the existence of such document or loss thereof cannot be pre-determined and without providing any opportunity to the parties. It would be proved with reference to evidence to be led by the parties and thereafter the Court will decide admissibility, relevancy and validity of the document at a relevant stage.

[7]. At this stage, the document can be exhibited with an endorsement of objection. The secondary evidence as a general rule is admissible in the absence of preliminary evidence, if the original itself is found to be inadmissible, then the parties relying upon the same is not entitled to by way of leading secondary evidence. At this stage, no such finding can be recorded as the defendants are in the process of leading evidence. The practice of holding up the trial at this juncture in order to prove the admissibility of a document would be an '*archaic practice*' which is deprecated by the Courts on number of occasions.

[8]. In view of nature of the document, in my considered opinion, the indulgence granted by the trial Court cannot be faulted with. However, the exhibition of document with an endorsement of objection would be decided by the trial Court in accordance with law and the validity and admissibility of the document would be tested at the threshold of evidence to be led

by the parties. The secondary evidence has been allowed, subject to proof of existence and loss of the document.

[9]. In view of aforesaid, finding no merit in the revision petition, the same is accordingly dismissed. The trial Court shall make every endeavor to decide the main suit at the earliest.

November 08, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No