

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.569 of 2016

Date of decision:29.3.2017

Sunil Joshi (minor) through her mother

...Petitioner

Versus

Mamta Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.H.P.S.Ghuman, Advocate for the petitioner.
None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition, at the hands of plaintiff, filed under Article 227 Constitution of India, is directed against the order dated 20.1.2016 passed by the learned trial Court, whereby learned trial Court dismissed the application of the petitioner for leading secondary evidence.

Notice of motion was issued.

Vide order dated 15.3.2016 passed by this Court, service was complete. However, none put in appearance on behalf of the respondent.

Placing reliance on two judgments of this Court in **Jawahar Lal Vs. Surinder Singh and others, 2014 (1) RCR (Civil) 520** and **Rekha Rani Vs. Vineet Kumar and others, 2014 (2) PLR 75**, learned counsel for the petitioner submits that once the petitioner has taken a specific averment in the plaint that Will dated 7.12.2009 was in possession of the defendants and defendants have denied the said fact in their written statement, existence and loss thereof would stand proved and duly established.

However, since the learned trial Court failed to appreciate this crucial aspect

of the matter, while passing the impugned order, a manifest injustice has been caused to the petitioner. He prays for setting aside the impugned order, by allowing the instant revision petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, the present revision petition deserves to be accepted. Since the impugned order is suffering from patent illegality and running contrary to the true facts of the case, the same cannot be upheld, for the following more than one reasons.

A bare combined reading of the plaint (Annexure P-2), copy of Will dated 7.12.2009 (Annexure P-3), application for secondary evidence moved by the plaintiff-petitioner (Annexure P-4) and reply thereto filed by the defendants vide Annexure P-5, would make it crystal clear that the plaintiff-petitioner was entitled to prove the Will dated 7.12.2009 by leading his secondary evidence. It is also pertinent to note here that in almost identical fact situation, a similar application was allowed by the the learned trial Court in another suit bearing Civil Suit No.83 of 2013 titled as Rajinder Parshand and othes Vs. Jugnu Joshi and others, whereby the plaintiff was allowed by the learned trial Court to prove this very Will dated 7.12.2009 by leading secondary evidence. It is also a matter of record that suit property is the same which was subject matter of consideration in the civil suit between Rajinder Parshand and othes Vs. Jugnu Joshi and others. Having said that, this Court feels no hesitation to conclude that the learned trial Court misdirected itself, while passing the impugned order and the

same cannot be sustained.

The above-said view taken by this Court also finds support from the judgments of this Court rendered in **Jawahar Lal's** case (supra) and **Rekha Rani's** case (supra).

As noticed hereinabove, it is a matter of record that plaintiff-petitioner has taken specific averment in his plaint and particularly in paras 3 and 4 thereof about the existence of Will dated 7.12.2009 and handing over the same to defendant No.1. The averments taken by the petitioner have been denied by defendants. Once it is so, the existence of the Will in question, i.e. 7.12.2009 has been *prima facie* established by the petitioner. So far as two earlier judgments *inter se* the parties, referred by the learned trial Court in the impugned order at page 11 of the paper-book, are concerned, the same are not final so far and the appeal and revision there against are pending before the higher courts, as argued by the learned counsel for the petitioner. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court fell in serious error of law, while passing the impugned order and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, the same cannot be sustained. Accordingly, the impugned order dated 20.1.2016 is hereby set aside.

Consequently, application of the petitioner-plaintiff for proving the Will dated 7.12.2009 by way of secondary evidence would stand

allowed. The learned trial Court is directed to allow the petitioner-plaintiff to prove the Will dated 7.12.2009 by leading his secondary evidence.

Resultantly, with the above-said observations made and directions issued, the instant civil revision petition stands allowed, however, with no order as to costs.

29.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No