

CR No. 6494 of 2017 (O&M)

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

**CR No. 6494 of 2017 (O&M)
Date of Decision: 22.9.2017**

Surinder Kumar

.....Petitioner

Vs.

Bobby Mattu and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ramesh Sharma, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant civil revision petition, at the hands of defendant filed under Article 227 of the Constitution of India, is directed against the order dated 7.8.2017 (Annexure P-6) passed by the learned trial court, whereby application moved by the plaintiff under Section 65 of the Indian Evidence Act, ('the Act' for short), for adducing secondary evidence with respect to registered Will dated 16.5.1995 was allowed.

Heard learned counsel for the petitioner.

At an earlier point of time, plaintiff moved an application seeking direction to the defendant-petitioner for producing original Will dated 16.5.1995. It was specifically pointed out by the plaintiff that original Will dated 16.5.1995 was handed over to the defendant for the purpose of getting the mutation sanctioned on the basis of the Will. However, defendant-petitioner denied that the original Will was in his possession.

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After hearing learned counsel for the parties, learned trial court disposed of said application of the plaintiff vide order dated 2.3.2017 (Annexure P-3).

Thereafter, having been left with no other option, plaintiff moved present application under Section 65 of the Act for adducing secondary evidence with respect to the abovesaid registered Will dated 16.5.1995. This application was moved by the plaintiff vide Annexure P-4. Defendant-petitioner filed his reply vide Annexure P-5. After hearing learned counsel for the parties and going through the record of the case, including the abovesaid order 2.3.2017, learned trial court rightly allowed the application of the plaintiff, permitting him to lead secondary evidence qua the registered Will dated 16.5.1995, by passing the impugned order dated 7.8.2017 (Annexure P-6). Under the abovesaid factual as well as legal aspect of the matter, no fault can be found with the impugned order and the same deserves to be upheld.

Passing of the abovesaid order dated 2.3.2017, which had gone unchallenged by the petitioner, would amount to notice to the petitioner under Section 66 of the Act. Once the defendant-petitioner did not think it appropriate to challenge abovesaid order dated 2.3.2017 (Annexure P-3), a valuable right came to be accrued in favour of the plaintiff to move the application under Section 65 of the Act, so as to enable him to adduce secondary evidence in respect of registered Will dated 16.5.1995. Having said that, this Court feels no hesitation to conclude that the learned court below committed no error of law, while passing the impugned order and the same deserves to be upheld.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order,

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which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserves to be upheld, 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 present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

22.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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