

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

CR No.7063 of 2017
Date of decision : 11.10.2017

Saravjeet Kaur

...Petitioner

Versus

Mandeep Singh Bharaj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1 is the petitioner in the present revision petition against the order passed by the learned trial Court permitting the plaintiff to lead secondary evidence in order to produce a copy of the registered Will.

Learned counsel for the petitioner-defendant No.1 has vehemently argued that before moving the application for permission to lead secondary evidence, notice as required under Section 66 of the Evidence Act was necessary and since the aforesaid notice was not given, therefore, application itself was not maintainable.

I have gone through the order passed by the trial Court. This argument was not raised before the trial Court.

Learned counsel for the petitioner could not point out even a single line in its reply where such objection was taken. Once this objection was not taken, while exercising the revisional jurisdiction, this Court cannot

allow the petitioner to raise such argument for the first time.

Still further, it is a case where Non-Resident Indian had filed a suit through a General Power of Attorney. It is the case of the plaintiff that all the documents were handed over to the aforesaid General Power of Attorney Holder for prosecuting the case. It is pleaded that the aforesaid Special Power of Attorney withdrew the suit without the permission of the Court and colluded with the other party.

Learned trial Court after appreciating the evidence available on the file has permitted the plaintiff to lead secondary evidence with respect to the aforesaid registered Will.

Learned counsel for the petitioner has further argued that the permission to lead secondary evidence can only be granted subject to the proof of existence of the document and its loss.

There is some substance in the argument. The order passed is upheld subject to the condition that the plaintiff would be required to prove the existence of the aforesaid document and loss thereof.

In view of the above, the present revision petition is dismissed.

11.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No