

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

CR No.8063 of 2015

Date of decision: 24.08.2017

Kewal Singh

...Petitioner

Versus

Chhinder Pal Kaur and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Yogesh Kumar Aneja, Advocate,
for the petitioner.

Mr. Sandeep Jasuja, Advocate,
for respondent Nos. 1 and 2.

Ritu Bahri, J.

Challenge in this petition is to the order dated 19.10.2015 (Annexure P-5) passed by the Civil Judge (Senior Division), Fazilka, whereby application filed by defendant No.1-petitioner under Section 65 of Indian Evidence Act for permission to lead secondary evidence to prove the Will dated 21.04.2001 executed by late Pritam Singh and affidavit dated 22.05.2001 executed by Chhinder Pal Kaur etc. (plaintiffs), has been dismissed.

Brief facts of the case are that plaintiffs-respondent Nos.1 & 2 filed a suit for declaration to the effect that they being legal heirs of deceased-Pritam Singh, resident of village Azam Wala, Tehsil & District Fazilka, are entitled to inherit his estate and mutation No.3931 sanctioned on 24.08.2001 by Assistant Collector, Ist Grade, Fazilka, has no effect on

the rights of the plaintiffs.

Upon notice, defendants (present petitioner and respondent Nos. 3 & 4) filed written statement taking a stand that Pritam Singh (father of plaintiffs and defendant Nos.1 & 2 and husband of defendant No.3) during his lifetime, in his sound disposing mind, had executed a Will dated 21.04.2001, vide which, he had bequeathed all his properties in favour of defendant No.1-petitioner (Kewal Singh). The said Will was executed in the presence of plaintiffs along with other witnesses. Plaintiffs-respondent Nos.1 and 2 had also executed affidavit on 22.05.2001 by admitting the legality, correctness and genuineness of the Will. On the basis of said Will, mutation No.3931 regarding inheritance of Pritam Singh was entered and sanctioned in favour of petitioner-defendant No.1 on 24.08.2001.

The original Will dated 21.04.2001 as well as original affidavit dated 22.05.2001 were tagged with the case file of the revenue authorities pertaining to mutation No.3931 dated 24.08.2001 regarding village Azamwala. At the time of leading evidence, defendant No.1-petitioner made an effort to summon the relevant record in respect of mutation No.3931 in order to prove execution of the Will dated 21.04.2001 and affidavit dated 22.05.2001 by examining the concerned revenue official. But, the revenue official did not bring the aforesaid record as the same was not traceable. Hence, the original Will and the affidavit were not in possession of the petitioner and he could not produce the same as primary evidence before the trial Court. In this background, he made an application under Section 65 of the Indian Evidence Act to lead secondary evidence in order to prove the will dated 21.04.2001 and affidavit dated 22.05.2001. However, trial Court dismissed the said application vide order dated 19.10.2015 (Annexure P-5).

Learned counsel for the petitioner states that loss of document in itself cannot be a ground to reject the application under Section 65 of the Evidence Act. In support of his contention, reference has been made to the judgments passed by this Court in **Smt. Prem Lala Vs. Smt. Kamla Devi and others**, 2006 (3) RCR (Civil) 227 and **Mohinder Singh Vs. Kuljeet Singh**, 2017 (1) Civil Court Cases 806 (P&H).

Learned counsel for the petitioner has further argued that at the time of sanction of mutation No.3931 dated 24.08.2001 (Annexure P-6) by Assistant Collector, Ist Grade, Fazilka, statements of witnesses namely Mukhtiar Singh and Jit Singh were also recorded. Gurmail Kaur widow of Pritam Singh got recorded her statement that she had no objection in sanctioning of the mutation on the basis of aforesaid Will. Chhinder Pal Kaur, Amarjit Kaur, Virpal Kaur, daughters of Pritam Singh, also produced their affidavits to the effect that the said Will was absolutely correct. Hence, the existence of the will in itself cannot be doubted.

Learned counsel for respondent Nos.1 and 2 (plaintiffs), on the other hand, has argued that existence of the original Will and the affidavit has not been proved by the petitioner at the time of leading his evidence. Therefore, the application under Section 65 of the Indian Evidence Act for permission to lead secondary evidence has rightly been dismissed by the trial Court.

After hearing learned counsel for the parties, this petition deserves to be allowed. A perusal of the order dated 24.08.2001 (Annexure P-6), whereby mutation No.3931 has been sanctioned, shows that Balbir Singh (scribe) had stated that he had scribed the aforesaid Will at the instance of deceased-Pritam Singh. After scribing the Will, deceased-

Pritam Singh put his signature thereon in the presence of witnesses namely Mukhtiar Singh and Jit Singh. Statements of both these witnesses were also recorded to the effect that the Will had been scribed in their presence. Pritam Singh had signed the Will in their presence after hearing contents of the same. Gurmail Kaur widow of Pritam Singh, Chhinder Pal Kaur, Amarjit Kaur, Virpal Kaur (daughters of Pritam Singh) had given their affidavits to the effect that the Will was absolutely correct and mutation be sanctioned on the basis of the same. Hence, the argument raised by learned counsel for respondent Nos.1 and 2 that existence of the documents is not proved, is liable to be rejected. At the same time, keeping in view the judgment passed in **Mohinder Singh's** case (supra), trial Court has to give finding with regard to loss of document along with other documents, at the time of final disposal of the suit. In this judgment, it has been held that even one of the grounds as mentioned in Section 65 of the Indian Evidence Act is spoken to by the party who is seeking for reception of secondary evidence, the Court is bound to accept it and leave it to the opposite party to elicit in the cross-examination that the grounds made are not true and the documents produced as secondary evidence ought not to be received. The Court has to take a decision with respect to the loss of document, at the final stage of the trial.

In the present case, even the existence of the Will stands duly proved vide order dated 24.08.2001 (Annexure P-6) passed by the Assistant Collector, Ist Grade, Fazilka, when mutation No.3931 regarding inheritance of deceased-Pritam Singh was sanctioned. Hence, the application for leading secondary evidence, filed by petitioner, should have been allowed by the trial Court.

Resultantly, impugned order dated 19.10.2015 (Annexure P-5) is set aside and petitioner is permitted to lead secondary evidence in respect of the Will dated 21.04.2001 executed by late Pritam Singh and affidavit dated 22.05.2001 executed by Chhinder Pal Kaur etc.

Allowed accordingly.

24.08.2017
ajp

(RITU BAHRI)
JUDGE

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