

Civil Revision No. 8778 of 2014 (O&M)

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

Civil Revision No. 8778 of 2014 (O&M)

Date of decision: 1.2.2017

Joga Singh and another

... Petitioners

Vs.

Gurwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Amit Jain, Advocate
for the petitioners.

Mr. Viney Saini, Advocate
for respondents No. 1 to 4.

Mr. G.S. Nagra, Advocate
for respondent No.8.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of defendants No.1 and 2, is directed against the order dated 9.12.2014 passed by learned trial court, whereby their application under Section 65 of the Indian Evidence Act, 1872 ('the Act' for short), seeking permission to lead secondary evidence to prove will dated 19.10.1983, was dismissed.

Notice of motion was issued.

Heard learned counsel for the parties.

Learned counsel for the petitioners, while placing reliance on three judgments of this Court in **Sawaran Kaur and others Vs. Shiv Raj Singh and others, 2012 (4) Law Herald (Punjab and Haryana), 3123,**

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Mohan Lal and others Vs. Smt. Ishwar Devi and others, 2013 (2) RCR (civil) 799 and Ashok Kumar Sachdeva VS. Harish Malik, 2007 (4) RCR (civil) 311, submits that since the existence of original will and loss thereof has been duly proved by the petitioners, learned trial court ought to have allowed their application for proving the said will by way of secondary evidence. He further submits that since the respondents, who are opposing the present revision petition, are their co-defendants, no prejudice was going to be caused to them. He prays for allowing the present revision petition, by setting aside the impugned order.

On the other hand, learned counsel for defendant No.6, respondent No.8 herein, submits that since neither the petitioners properly pleaded, nor proved the existence and loss of the will propounded by them, learned trial court committed no error of law, while passing the impugned order. He also submits that petitioners-defendants No.1 and 2 filed the application for leading secondary evidence after an inordinate long period of five years, which was rightly dismissed by learned trial court. He also submits that since defendant No.6 has set up separate will dated 30.5.2001 suffered by late Smt. Gurnam Kaur, which was a genuine will, petitioners are not entitled to lead any secondary evidence regarding will dated 19.10.1983. He prays for dismissal of the present revision petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view peculiar facts and circumstances of the case noticed hereinabove, impugned order dated 9.12.2014 passed by learned trial court cannot be upheld. Present revision petition deserves to be accepted for

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the following more than one reasons.

It is a matter of record that mutation of inheritance bearing No. 2551 dated 27.9.2007 (Annexure P-3) came to be sanctioned by the competent authority, on the basis of registered will dated 19.10.1983. It is so recorded in column No. 13 of the mutation (Annexure P-3), at page 27 of the paper book. A bare reading of the mutation (Annexure P-3) would show that it was entered and sanctioned on the basis of registered will dated 19.10.1983, thus, existence of will dated 19.10.1983, propounded by the petitioners, has been duly proved.

So far as loss of the will in question is concerned, petitioners have specifically taken appropriate averments in para 3 of their application, at page 19 and 20 of the paper book, that will dated 19.10.1983 could not be traced out. Having said that, this Court feels no hesitation to conclude that petitioners have satisfied the requirements of law for the purpose of leading secondary evidence, as per the provisions of Section 65 of the Act. Since learned trial court could not appreciate the abovesaid factual as well as legal aspect of the matter in the correct perspective, while passing the impugned order, the same cannot be upheld.

The abovesaid view taken by this Court also finds support from the judgment of this Court in Mohan Lal's case (supra). Relevant observations made in para 9 to 11 of the judgment in Mohan Lal's case (supra), which can be gainfully followed in the present case, read as under:-

*“In the present case, the existence and loss of the original Will has been duly explained, in such situation, non production of the original Will cannot deprive the defendant to prove the said Will by way of secondary evidence. Even this Court in case **Mukhtiar Singh v. Bant Singh and another (1991-1) 99 P.L.R.***

15, observed that a photostat copy of the original Will which has been placed on record may be permitted as secondary evidence to be led in. The same view was taken in **Smt. Raj Kumar v. Shri Lal Chand, (1994-1) 106 P.L.R. 190**. The decision in **Roman Catholic Mission v. State of Madras, AIR 1966 S.C. 1457** has no application at this stage as it is apparent from the record that the original was produced before mutation officer on the death of Chanan Dass and mutation was sanctioned on that basis. The observations made **Roman Catholic Mission's** case (supra) are not applicable for another reason that in that case the Supreme Court was dealing with the matter after conclusion of the entire evidence and not at the stage when the secondary evidence was sought to be adduced. It is also pertinent to mention here that the value of the secondary evidence if so led, has to be determined at the conclusion of the trial only. The judgment delivered in **Mukhtiar Singh's** case (supra) is applicable to the facts of the present case on all fours. In the said case the party leading secondary evidence had taken the plea that the person, in whose possession the original document was, had died. The court, in those circumstances, had permitted the leading of the secondary evidence. Similar observations were made in case **Smt. Raj Kumar v. Shri Lal Chand (1994-1) P.L.R. 190** wherein it was observed as under :-

“... Petition-writer in his statement, stated that the document in original, along with its copy, was given to Hem Raj and Ram Nath, i.e. father and uncle of the parties. Plaintiff in her statement stated that she made enquiries from the sons and daughters of Ram Nath, but they showed their ignorance with regard to whereabouts of the document in question. Hem Raj, father is dead and the defendant has denied the execution of the document. Thus, the plaintiff has successfully proved on record that the original document has been lost. Secondary evidence

is permissible when the original document has been destroyed or lost or when the party offering evidence of its contents cannot for any reason not arising from his own default or neglect, produce it in reasonable time. A party seeking permission to produce secondary evidence regarding a document is not required to prove the loss of document in absolute term.....”

*It was also observed in case **Gurbux Singh and others vs. Bishan Dass 'Chela' Kaul Dass and others, AIR 1970 Punjab & Haryana 182** that where the document is registered then although its mere registration may not by itself constitute sufficient proof of the execution of the document, in view of Sections 57 and 60 of the Registration Act, however, the certified copy thereof may prove its existence. As regards loss, in case of a registered document, one way or the other, it does not require the proof of loss, in such a stricter sense that it must be accompanied by definite evidence of loss when once the plea of loss is set up and is proved by way of affidavit or otherwise, then it should normally be considered particularly when the validity, genuineness, admissibility and proof are to be seen at the time of trial.*

Reverting to the facts of the present case and respectfully following the law laid down by this Court in Mohan Lal's case (supra), it is unhesitatingly held that learned trial court committed a serious error of law, while dismissing the application of petitioners and the same is liable to be set aside.

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 imugned order dated 9.12.2014 has been found suffering from patent illegality, the same cannot be sustained and is

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hereby set aside. Present revision petition deserves to be accepted. Petitioners are held entitled to lead secondary evidence, so as to prove registered will dated 19.10.1983 propounded by them.

Consequently, learned trial court is directed to grant reasonable opportunity to the petitioners to prove will dated 19.10.1983, by leading their secondary evidence, in accordance with law. Parties are directed to appear before learned trial court on 14.2.2017.

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

1.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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