

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

**CR No.1455 of 2017
Date of Decision: 04.07.2018**

Richhpal Singh

.....Petitioner

Vs

Iqbal Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mohit Jaggi, Advocate
for the petitioner.

None for respondent No.1.

Mr. Sanjay Verma, Advocate
for respondents No.2 to 4.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 08.12.2016 passed by the Civil Judge (Senior Division), Shahabad, whereby application under Section 65 of the Evidence Act for leading secondary evidence in the suit was rejected.

[2]. The application was filed by the plaintiff/petitioner on the basis of Will dated 07.01.2011 to the effect that he has become owner of the suit property after the death of Smt. Mahender Kaur. It was submitted earlier that the plaintiff along with his family was residing at Ambala and after his retirement, he has shifted to ancestral house in Shahabad in July 2015. During shifting of the house, the original Will dated 07.01.2011

got misplaced somewhere in the ancestral house and the same was not traceable despite due efforts. Plaintiff sought to produce certified copy of Will in question as secondary evidence. The Will was a registered document with the office of Sub Registrar, Ambala.

[3]. The prayer was declined by the trial Court on the ground that the Will has to be proved by examining at least one attesting witness. The registration of Will will not enhance or diminish the authenticity and genuineness of the same. Proving the execution of the Will is the subject matter of leading evidence by the plaintiff at appropriate stage.

[4]. In **Bipin Shantilal Panchal Vs. State of Gujarat, 2001(1) RCR (Criminal) 859**, the Hon'ble Apex Court laid down that the procedure has been set for receiving the documents when the same is objected to during trial. The Hon'ble Apex Court has castigated the practice of holding up trial on objections taken at the time of tendering documents in evidence. At that stage, asking the Court to pass an appropriate order on objections has been categorized as an 'archaic practice'.

[5]. The leading of evidence at the stage pursuant to the passing of the impugned order would not crystallize any substantial right in favour of the defendants, rather the evidence

led by the parties would be tested at the threshold of admissibility, validity and genuineness of the document in terms of execution and its nature. Later stage would be an appropriate stage for lawful consideration of such a criteria i.e. validity, admissibility and genuineness of the document. Though there is no provision in law for de-exhibiting the document already exhibited in evidence, but the exhibition of a document, if objected to has to be answered in terms of its admissibility at a later stage. The offer of secondary evidence can be at best impeached in cross examination. It will be for the Court to examine and decide as to whether it will be appropriate to rely upon such secondary evidence or not for want of compliance of Section 65 of the Evidence Act. In case, Court finds the secondary evidence not reliable, the Court is at liberty to eschew the same. However, the attempt of a party for production and to exhibit the document cannot be thrown at this threshold. The view expressed in **Dr. S.P. Arora Vs. Satbir Singh, 2010(5) RCR (Civil) 350** and **Simar Pal Singh Vs. Hakam Singh, 2009(14) RCR (Civil) 273** can be relied in the aforesaid context.

[6]. The contentions of both the parties would be adequately answered by the Court at the time of consideration of the issue on merits. In **U. Sree Vs. U. Srinivas, 2013 (1)**

RCR (Civil) 883, the Hon'ble Apex Court has commented that to permit secondary evidence which has been destroyed by the person in whose possession it was and whose it created an enforceable legal right or an obligation, is normally not to be allowed as secondary evidence. The secondary evidence of such a nature may be tempered with or changed and it would be against public policy to take chance of running the risk of fraud being committed.

[7]. Such situation is not involved in the present case, rather the registered Will is claimed to be lost during shifting of the house. The registered Will can be proved with reference to evidence of the scribe and attesting witnesses during course of proceedings at a later stage. At this stage of litigation, curtailing the right to lead secondary evidence would not be in consonance with settled principles of law.

[8]. In view of above, impugned order dated 08.12.2016 passed by the Civil Judge (Senior Division), Shahabad is set aside. Application for leading secondary evidence is allowed. Normal consequences to follow.

July 04, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No