

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

C.R.No.2375 of 2017 (O&M)

Date of Decision: May 10, 2018

Ravinder Singh

...Petitioner

Versus

Parminder Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Gurbir Singh Sidhu, Advocate,
for the petitioner.

Mr.Anantdeep Singh, Advocate,
for the respondents.

AMIT RAWAL, J.

The present revision is directed against the order dated 6.3.2017 (Annexure P-1), whereby the application moved by the petitioner-defendant for seeking permission to lead secondary evidence regarding Will dated 15.11.2000, has been rejected.

Mr.Gurbir Singh Sidhu, learned counsel for the petitioner-defendant submitted that the respondent-plaintiffs instituted the suit for possession of 2/3 share of the house, i.e., the suit property regarding estate of Gurbachan Singh, who died on 3.12.2000 and his successors are petitioner Ravinder Singh, deceased Harbans Singh and plaintiff Surinder Kaur in equal shares. According to the averments in the plaint, after the death of Gurbachan Singh, Surinder Kaur became co-sharer with 1/3 share, deceased Harbans Singh with 1/3 share and Ravinder Singh 1/3 share.

Defendant was trying to stop the plaintiffs from using their share of the

house. When the defendant tried to defeat the right of the plaintiffs, necessity arose to file the suit.

He further submitted that the petitioner-defendant filed the written statement and contested the suit on various grounds. On merits, it was stated that deceased Gurbachan Singh, during his life time before he died on 3.12.2000 had executed a Will dated 15.11.2000. Even the last rites were performed by the defendant. The written statement is dated 18.11.2015. Replication was filed. However, when the case was pending adjudication, an application dated 20.12.2016 (Annexure P-5 colly) for leading secondary evidence on behalf of the defendant was submitted, for, the aforementioned Will was misplaced on 8.11.2016. In this regard, a rapat dated 5.12.2016 was lodged regarding the loss of the Will in Sanjh Centre. The indulgence of the Court was sought by enclosing copy of the Will and rapat and self declaration of Navpinder Singh dated 3.12.2016. The aforementioned application was contested by the respondent-plaintiffs by alleging that the Will was forged and fabricated. It was just a concoction.

It was next contended that the trial Court ought not to have dismissed the application and should have given the permission to lead secondary evidence subject to the mode and proof.

Mr.Anantdeep Singh, learned counsel for the respondent-plaintiffs submitted that the petitioner-defendant did not comply with the requirement of Order 8 Rule 1-A CPC introduced w.e.f. 1.7.2002, whereby the documents sought to be relied upon in possession and power of the defendant, were required to be presented along with the written statement. It was a calculated attempt to prove the photostat copy of the Will, which is not permissible to be taken as secondary evidence. Moreover, deceased

Gurbachan Singh had retired as Reader from the judicial department and on bare glance of the alleged Will, which is referred to as “Khangī Wasiyat”, could not have been got written from such a learned and literate person and, thus, prayed for upholding the findings.

In rebuttal, Mr.Sidhu relied upon the judgments rendered by this Court in **Avtar Singh Bains Versus Gurdev Kaur alias Debo Kaur and others, 2016(2) PLR 508** and **Harjinder Singh Versus Ranjit Kaur and others, 2016 (2) PLR 46** to contend it will be a complete denial of justice for a Court to prejudge that the party cannot produce even the secondary evidence and, thus, there is illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce Rule 1-A of Order 8 CPC. The same reads thus:-

“Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.”

No explanation has come forward or the written statement contained any averment that the attested copy of the original Will was annexed with the written statement or any application submitted to the Court for the protection of the Will from tampering in case the original had been filed. The written statement was filed on 18.11.2015. The Will is stated

to have been lost on 8.11.2016, but no explanation has come forward in not lodging the FIR or rapat immediately. The rapat was lodged on 5.12.2016. It is settled law that photocopy of the document cannot be permitted as it cannot be ascertained that it is copy of the original or a copy of the copy.

There is no dispute to the ratio decidendi culled out in the judgments cited supra, but the present case is not a case of prejudging of the issue with regard to the forgery of the Will. No such circumstances have been explained in the application enabling the trial Court or this Court for granting permission to lead secondary evidence subject to the mode, existence and loss, which is pre-requisite for the purpose of granting permission as per the provisions of Section 65 of the Indian Evidence Act. As per Section 90 of the Act, even if Will was registered, would not carry presumption of truth. All these points, in my view, leave to an irresistible conclusion that the case of the petitioner does not fall within the parameter of Section 65 of the Act and rightly so, the application was dismissed.

For the reasons stated above, I do not find any illegality or perversity in the impugned order. The same is upheld. Revision petition is dismissed.

May 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No