

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

Civil Revision No.2367 of 2018.
Decided on:-April 16, 2018.

Jaspal Kaur.

.....Petitioner.

Versus

Karnail Kaur and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ashish Gupta, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

The petitioner-plaintiff has filed the present civil revision under Article 227 of the Constitution of India for setting aside the order dated 23.02.2018 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Bagha Purana, whereby the application filed by the respondent-defendant No.3 to lead secondary evidence to prove the unregistered Will dated 13.04.1997 executed by Bachan Singh in favour of Karnail Kaur (widow) and Harjit Singh (son), was allowed.

Briefly stated, the petitioner-plaintiff had filed a suit for declaration to the effect that she is owner in joint possession of the land, as detailed in the plaint and the Will dated 13.04.1997 executed by deceased Bachan Singh (father of the petitioner-plaintiff) in favour of defendant No.1 Karnail Kaur and deceased Harjit Singh (now represented by defendants No.2

and 3) is illegal, null and void and has no effect on the rights of the plaintiff and defendants No.4 and 5. It was further pleaded that the mutation No.6584 entered on the basis of unregistered Will dated 13.04.1997 in favour of defendant No.1 Karnail Kaur and Harjit Singh (deceased) is illegal. Similarly, further mutation No.6941 regarding inheritance of deceased Harjit Singh (1/2 share inherited by Harjit Singh on the basis of alleged Will dated 13.04.1997) entered in the names of respondent-defendants No.1 to 3 is also illegal.

While the aforesaid suit was pending before the civil Court, the respondent No.3 Gurjeet Kaur widow of Harjit Singh had moved an application under Section 65 of the Indian Evidence Act, 1872 so as to prove the unregistered Will dated 13.04.1997 executed by Bachan Singh in the presence of attesting witnesses by way of secondary evidence.

The said application was allowed by the civil Court vide impugned order dated 23.02.2018. It is against the said order, the petitioner has filed present revision petition.

Learned counsel for the petitioner has argued that the trial Court has not taken into consideration the fact that the Will in question is unregistered and even otherwise, the respondent-defendants were required to prove the existence and loss of the Will. Since in the case in hand, the Will was unregistered, the same can be prepared and procured at any point of time. Mere mentioning of the fact that the original Will was available with the Revenue Department is not sufficient for the respondent-defendant No.3 to lead secondary evidence of the alleged Will. Even otherwise, the respondent-defendant No.3 wants to produce the photocopy of the Will on record despite

being conscious of the fact that the thumb impressions and signatures of the parties to the Will cannot be proved by examining the handwriting and fingerprint expert. There is no concrete evidence with the respondent-defendant No.3 to establish the fact that the Will dated 13.04.1997 ever existed and was lost.

I have heard learned counsel for the petitioner and perused the impugned order dated 23.02.2018 passed by learned civil Court.

The pleaded case of respondent-defendant No.3 to lead secondary evidence of the alleged Will dated 13.04.1997 is that the original Will dated 13.04.1997 was handed over to the village Patwari at the time of entering of mutation of inheritance of deceased Bachan Singh and the same was attached with the mutation paper. The beneficiary did not consider it necessary to get it back after the sanction of the mutation as the plaintiff had got recorded her statement before the Revenue Officer to admit the validity of the said Will. Even otherwise, the respondent-defendant No.3 sought summoning of the original Will dated 13.04.1997 by examining the Kanungo so as to produce the mutation paper, but this Kanungo made a statement before the civil Court that the original Will dated 13.04.1997 is missing from the mutation paper. The photocopy of the said Will is stated to be not available on record.

Since the respondent-defendant No.3 has specifically pleaded that she had handed over the original Will dated 13.04.1997 to the village Patwari at the time of entering the mutation, this Court finds that learned civil Court has not committed any illegality or irregularity in allowing the

application for leading secondary evidence in order to prove the Will dated 13.04.1997. Even otherwise, the respondent-defendant No.3 is strictly required to prove the existence and loss of the Will dated 13.04.1997 in the light of Section 65 of the Indian Evidence Act, 1872.

Therefore, no interference is warranted in the impugned order dated 23.02.2018 passed by the civil Court by invoking the revisional jurisdiction of this Court.

Accordingly, the impugned order dated 23.02.2018 passed by the civil Court is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

April 16, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No