

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.255 of 2018

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Date of decision:16.5.2018

Rakesh Japra and another

.....Petitioners

v.

Sant Ram and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. M.S. Atwal, Advocate for the petitioners.

None for the respondents.

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Inderjit Singh, J.

Rakesh Japra and Saroj Saini-petitioners/plaintiffs have filed this civil revision petition against Sant Ram, Kishore Kumar, Shashi Rai Saini and Anup Japra-respondents/defendants under Article 227 of the Constitution of India for setting aside the impugned order dated 8.11.2017 (Annexure-P.1) passed by the learned Civil Judge (Junior Division), Hoshiarpur, vide which the application filed for leading secondary evidence under Section 65 of the Indian Evidence Act has been allowed illegally, arbitrarily and against the provisions of law.

Notice of motion has been issued in this case.

Mr. Kartik Gupta, learned Advocate has put in appearance on behalf of respondents on 26.4.2018, but after that no one has appeared for

the respondents to contest this civil revision petition.

I have heard learned counsel for the petitioners and have gone through the record.

From the record, I find that Rakesh Japra and Saroj Saini filed the suit against Sant Ram and others for declaration to the effect that the plaintiffs along with the defendants are joint owners in possession to the extent of one-sixth share each, mutated as it is in the name of Sant Ram-defendant vide mutation No.13850 in the matter of inheritance of Smt. Sushila Wati wife of Sant Ram, with consequential relief of perpetual prohibitory injunction thereby restraining defendant Sant Ram from selling, mortgaging, gifting or alienating the suit land in any manner whatsoever as well as from interfering in plaintiffs' possession of it illegally and forcibly.

During the pendency of the suit, an application to lead secondary evidence was filed by defendants wherein it has been stated that the present suit has been filed by the plaintiffs for declaration regarding the estate of Smt. Sushila Wati being her legal heirs. Smt. Sushila Wati had executed a Will dated 9.9.1994 in favour of her husband Sant Ram. The mutation regarding the estate of Smt. Sushila Wati had already been entered and sanctioned in the name of her husband on the basis of her last Will dated 9.9.1994. Even the probate on the basis of Will dated 9.9.1994 has been granted in favour of Sant Ram on 30.4.1997 by District Delegate Serampore vide letter of Administration No.22/95. The original Will dated 9.9.1994, which was the last Will of Smt. Sushila Wati, is not traceable as it might have been placed on the mutation proceedings or in the probate proceedings. Defendant No.1 wants to prove the Will dated 9.9.1994 for

proper adjudication of the case. Defendant No.1 is in possession of photo copy of the Will. Since the original is not available due to above mentioned fact, hence defendant No.1 wants to prove the said Will by way of secondary evidence.

In the reply, it had been stated that Smt. Sushila Wati during her life time did not execute any Will. The alleged Will is forged and fabricated document prepared in connivance with the witnesses. The alleged probate has been obtained by defendant Sant Ram playing fraud on the probate Court which has no material bearing on the present case. The photo copy of the alleged Will, which is an unregistered document, could not be proved by way of secondary evidence.

After hearing learned counsel for the parties, the learned Civil Judge (Junior Division), Hoshiarpur, vide impugned order dated 8.11.2017 allowed the application.

From the record, I find that as per the case of the defendant-applicant mutation had already been sanctioned on the basis of this unregistered Will. As per the case of the defendant the probate had also been sanctioned on the basis of this unregistered Will which means the existence of the Will *prima facie* is proved. Secondly, it is the case of the defendants that the Will is not traceable as it might have been placed on the mutation proceedings or in the probate proceedings.

Keeping in view the above facts, I find that the secondary evidence is to be allowed of this Will to do substantial justice between the parties. If the secondary evidence is not allowed, the defendants will suffer loss and will get no right to prove the execution of the Will. The photo

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copy of the original Will can be proved in secondary evidence. As regards that the Will is forged and fabricated document, it is a finding of fact to be given by the lower Court on the basis of evidence produced by the parties. At this stage, only secondary evidence has been allowed as original Will as stated by defendants is not traceable.

Therefore, from the above discussion, I find that the impugned order dated 8.11.2017 passed by the learned Civil Judge (Junior Division), Hoshiarpur, is correct as per law and no illegality has been committed by the learned lower Court while passing this order, which does not require any interference from this Court.

Hence, finding no merit in this civil revision petition, the same is dismissed.

May 16, 2018.

(Inderjit Singh)
Judge

hsp

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