

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

**Civil Revision No.3178 of 2014 (O&M)
Date of Order:26.04.2018**

Harbhajan Singh

..Petitioner

Versus

Jarnail Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Rangi, Advocate, and
Mr. Saurav Bhatia, Advocate,
for the petitioner.

Mr. Swarn Tiwana, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-petitioner is in the revision petition against the order passed by the learned trial court permitting the plaintiff to lead secondary evidence with respect to registered Will dated 17.02.1986. The prayer was allowed as defendant no.1 had in reply submitted that the original Will is not in his custody.

Counsel for defendant no.1-petitioner has pointed out that in the previous proceedings, defendant no.2 had produced the original Will. He submits that notice could have been given to defendant no.2 before passing the impugned order. He relies upon provisions of Section 66 of the Indian Evidence Act.

On the other hand, learned counsel for the respondent-plaintiff after taking instructions from his client has submitted that at the time of registration of the Will, two copies in original were prepared, one was given

to the parties after registration, whereas second copy, duly signed by the testator and attesting witnesses, is available in the office of the sub-Registrar. He has submitted that since defendant no.2 is already ex-parte in the suit, therefore, defendant no.2 cannot be compelled to produce the Will.

No doubt, technically the court should have given notice to defendant no.2 to produce the copy of the Will. However, taking into consideration the fact that defendant no.2 is not contesting the suit and has been proceeded against ex-parte, no useful purpose would be served by issuing notice to defendant no.2 in the present revision petition and has not even chosen to appear in this revision petition also.

Once a copy of the Will, which bears the original signatures of the testator and the attesting witness is available in the office of the sub-Registrar and while proving the certified copy of the Will, the same be brought before the Court from the office of the Registrar or Sub Registrar. Hence, no prejudice shall be caused to the petitioner. The petitioner is well within its powers to get the signatures of the testator or the attesting witnesses compared from the Handwriting and Finger Print Expert with the copy of the Will which is available in the office of the sub-Registrar.

In view of the aforesaid, the revision petition is disposed of accordingly.

April 26, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No