

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

CR No.3203 of 2017
Date of decision: 10.05.2018

Jagdev Singh

..... Petitioner

Versus

Amarjit Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

None for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in the revision petition against the order passed by the learned trial Court dismissing the application under Section 65 of the Evidence Act for permission to lead secondary evidence.

Learned Judge has dismissed the application by recording the following reasons:-

“As per Section 65 of the Evidence Act, the secondary evidence relating to the document may be given where the original has been lost or destroyed or when the existence and contents of the original have been proved to be admitted in writing by the person against whom it is proved. In the present case, no foundation could be laid for the admission of secondary evidence. Moreover, the respondents are not admitting the contents of the original. Accordingly, the application under reference stands dismissed.”

A reading of the operative part of the order establishes that the learned Court has dismissed the application only on the ground that no foundation has been laid for admission of the secondary evidence.

Learned counsel for the petitioner has drawn attention of the Court to para 2 on merits, of the written statement filed by him wherein the defendant had pleaded that the original Will has been lost as it is an old testamentary document. The defendant-petitioner had attached a certified copy of the Will along with written statement. Thereafter, when application under Section 65 of the Evidence Act was filed, the defendant-petitioner pleaded that the original Will has been lost and in spite of thorough search, it could not be found out. The application is said to be supported by an affidavit.

In this case, notice of motion was issued. As per office report, the contesting respondent has been served, however, no one has come forward to contest the revision petition.

In view of the facts noticed above, it is apparent that the learned trial Court overlooked the plea in the written statement as well as in the application. At the stage of moving an application under Section 65 of the Evidence Act, the loss of the document is not to be proved in absolute terms. The application for secondary evidence can be allowed subject to proof of existence of the original document and proof thereof. In the present case, the requirement of Section 65 of the Evidence Act has been fulfilled.

In view of the aforesaid, the application for secondary evidence is allowed and the defendant-petitioner is permitted to lead secondary evidence subject to evidence of existence of the document and loss thereof.

Revision petition is allowed.

10.05.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No