

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

CR No.3558 of 2013
Date of Decision :01.02.2018

Siri Guru Granth Sahib, Gurudwara Siri Guru Nanakpura Sahib Dhuri Pind
.....Petitioners
Versus

Baldev Kaur and others
.....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.H.S.Saggu, Advocate, for the petitioner.

Mr.Manpreet Singh, Advocate, for respondent No.1.

Mr.Munish Gupta, Advocate, for respondents No.2 to 4.

RITU BAHRI, J. (ORAL)

The petitioner has come up in revision against the order dated 14.05.2013 (Annexure P/1) passed by the learned Civil Judge (Jr.Divn.) Dhuri, District Sangrur, whereby, an application filed by the plaintiff to lead secondary evidence had been declined.

The brief facts of the case are that the plaintiff had filed a suit for a decree of declaration claiming itself to be the owner in possession of property measuring 21 Bighas 9 Biswas being 429/432 share of land measuring 21 Khasra No.1049/21-12 situated at Dhuri on the basis of Regd. Will No.123 dated 05.07.2007 duly executed by the deceased Gurbachan Singh in favour of the plaintiff/petitioner herein and declaring the Mutation No.38686 got sanctioned by defendant No.1 in her favour illegally in connivance with the revenue authorities on the basis of natural succession, concealing the factum of Regd. Will duly executed by the deceased in favour of the plaintiff/petitioner herein to be null and void.

Learned counsel for the plaintiff/petitioner had argued that in the

replication filed by the plaintiff, it had been specifically pleaded that after the death of Gurbachan Singh, the Will dated 05.07.2007 was stolen by defendant No.1 in connivance with others executed by the deceased Gurbachan Singh in her favour.

In reply to the application, the defendant No.1 denied the possession of the alleged Will No.123 dated 05.07.2007. The Will dated 05.07.2017 was lying with the Registrar. Since a certified copy of the same was available on the case file, in this backdrop, the plaintiff/petitioner had sought that the Will should be lead as secondary evidence. The learned trial Court had dismissed the abovesaid application on the ground that the allegation for loss of Will has been attributed to defendant No.1 that she had stolen the same cannot be acceptable as a wife cannot be termed to be a thief for taking or managing the properties of her husband either during his life time or after his death and furthermore, vide order dated 18.03.2013, the application of the plaintiff for directing the defendant to produce the original Will had already been dismissed with the observation that there were no averments in the plaint of the plaintiff which were alleged by it in the application. Therefore, application being ambiguous and vague.

Learned counsel for the petitioner has referred to the judgment of this Court in the case of Ved Parkash Vs.Rattan Lall Aggarwal 2005(1) Civil Court Cases 0103 to contend that an application for secondary evidence should be allowed if the document was registered and plaintiff/petitioner was not able to get the same. He has further referred to the judgment of this Court in the case of Ram Sahai Sood Vs.Om Parkash Sood and Ors. 2005(3) Civil Court Cases 0623 where an application for leading secondary evidence has been allowed subject to proof of existence and loss thereof. It is held in this case that if Court is satisfied about prima facie existence of such conditions, which will have to be proved before secondary evidence is accepted. Learned counsel for the petitioner further submits that Will dated 05.07.2007 was registered will and the same was lying with the case in the office of Sub-Registrar,Dhuri.

The learned trial Court had dismissed the application by the impugned order simply on the ground that there is no document on record to show the possession of the defendant No.1 over the alleged Will propounded by the plaintiff nor there was any date mentioned by the plaintiff when the defendant No.1 took over the same nor anything with regard to the action taken by the plaintiff in this

had been mentioned nor it had been mentioned as to when the plaintiff came to know that the defendant No.1 was in possession of the alleged Will. In **Ved Parkash's case (supra)**, it is held that the mortgage deed is a registered document. The original of the same was required to be with the plaintiff. Since the plaintiff had not been able to locate the same, nothing more could be proved or stated by the plaintiff before which the plaintiff could be permitted to lead secondary evidence.

Learned counsel for the respondents had referred to a Full Bench of the this Court reported as **Gutari Vs. Shiv Charan and others, 1980 AIR 273** to contend that the plaintiff has not made out a case for leading secondary evidence to prove the mortgage deed and it is held in this judgment as under:

“The argument that the certified copy of the mortgage deed is a public document being a private record kept by public authority is not sustainable in law in view of the Full Bench judgment of this Court in Gutari's case (supra). It has been held therein that what is kept in the records of the Registering Authority is a copy of the original as the original is returned to the party and, therefore, certified copy is from a copy kept in the public record and the said certified copy is made admissible in evidence in terms of the provisions of Section 57(5) of the Registration Act. In the absence of Section 57(5) of the Registration Act, certified copy of such a document would not have been admissible at all. It is held to the following effect:-

".....The explanatory paragraph to Section 57 envisages, as already observed in the earlier part of the judgment that secondary evidence of the original documents mentioned in clauses (e) and (f) of Section 57, could be adduced only in the form of certified copies and no others. Copies of the true copies given by the Registering authority of the original documents are not certified copies of the original documents and, therefore, would not be admissible as secondary evidence of the original document. In fact, but for the

provision of sub-section (5) of Section 57 of the Registration Act, such a certified copy of a true copy could not have been received in Court to prove the contents of the original document. The said provision of sub section (5) of Section 57 was incorporated not to enact a law of the kind which permitted the giving in evidence of a certified copy of the original, as envisaged by clause (f) of Section 65 of the Act, but to overcome the difficulty of non-reception in evidence of a certified copy of a true copy, the same not being certified copy of the original, which alone qualified to be called secondary evidence in terms of Section 63 of the Act."

Learned counsel for the petitioners has further referred to the judgment in the case of **Gurdial Kaur Vs. Registrar Co-operative Society, Punjab (2000-1) 124 PLR 156**, the Court held that secondary evidence can be allowed subject to his proving due execution of the document. It was held to the following effect;-

"It was held in Krishan Kumar v. Pal Singh (1989-1)95 P.L.R. 55 that "it was incumbent upon the respondent to lead evidence to prove existence of the original will". Impugned order could not be passed without evidence to that effect had been led "learned trial Court could not have allowed the Company to lead secondary evidence without the Company having proved that original receipts had come into existence and they got lost after they had come into existence. Learned counsel for the petitioner submitted that when receipts had not been pleaded in the written statement, no permission to lead secondary evidence thereof could have been asked for. In Gurditta v. Balkar Singh and Anr., (1989-1)95 P.L.R. 418, it was observed that "where agreement to sell was never pleaded in the written statement application to lead secondary evidence by way of photostat copy was filed after more than two years, there was no occasion for the trial Court to allow the defendant to lead secondary evidence

particularly when the existence of the original document was not proved." It was held that the observations made by the trial court that secondary evidence is allowed subject to his proving the due execution of the agreement and loss thereof was wholly irrelevant because the secondary evidence could be allowed only if the existence of the original document was proved in the first instance. In Ved Parkash and Anr. v. Smt. Kartar Kaur and Ors., (1993-2)104 P.L.R. 452, it was held that "in order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution-of the original document."

In Ram Sahai Sood Vs. Om Parkash Sood 2005(2) Civil Court Cases 0623, it is held that the application for secondary evidence was allowed subject to proof of existence and loss of will. It is sufficient if Court is satisfied about prima facie existence of such conditions, which have to be proved before secondary evidence is accepted and no prejudice is caused to the opposite party.

Reference has also been made by the judgment of Hon'ble Supreme Court in the case of **Nawab singh Vs. Inderjit Kaur (1999)4 SCC 413** by the petitioners in which it is stated that secondary evidence of a registered mortgage deed by way of its certified copy can be led in terms of the provisions of Section 65(f) of the Evidence Act as the mortgage deed is a private document kept in public record. Alternatively, it is argued that the plaintiff had made out a case for leading secondary evidence in terms of the provisions of Section 65(c) of the Evidence Act i.e. for the reason that the original has been lost.

In the present case, the Will dated 05.07.2007 was registered document and the plaintiff has, prima facie, made out a case for loss of document. The original of the same was required to be with the plaintiff. Since the plaintiff had not been able to locate the same, nothing more could be proved or stated by the plaintiff before which the plaintiff could be permitted to lead secondary evidence.

In view of the above, this revision is being allowed and the impugned

lead secondary evidence subject to the condition that during the trial, plaintiff will prove the due execution and loss of Will.

(RITU BAHRI)
JUDGE

01.02.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No