

Civil Revision No.3795 of 2017

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

Civil Revision No.3795 of 2017

Date of decision: 01.06.2018

Sonia and another

.....Petitioners

versus

Angrej Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Prashant Bansal, Advocate, for the petitioner.
Mr. Som Nath, Advocate, for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India challenge has been laid to order dated 19.05.2017 (Annexure P-5) of the trial Court, whereby application of respondents-defendant to prove 'will' dated 09.03.1986 allegedly executed by Ram Asra during his lifetime, by way of secondary evidence, was allowed.

In nutshell, petitioners filed a suit to declare them owner in possession of the suit property, detailed in the headnote of the plaint, being natural heirs of Ram Asra, against the respondents, pleading that 'will' dated 09.03.1986, allegedly executed by their father deceased Ram Asra was a forged and fictitious document. Therefore, mutation No.3295 on the basis thereof and further execution of registered sale deed No.6361 dated 02.02.2009 by respondent No.1 in faovur of respondents No.2 to 6 were liable to be declared illegal, null and void, having no binding effect on

Upon notice, respondents contested the suit. During trial,

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respondents moved application for proving 'will' dated 09.03.1986, allegedly executed by Ram Asra, by way of secondary evidence, taking the plea that its original was produced at the time of sanction of the mutation and subsequently it lost.

After contest and hearing both the sides, the trial Court vide impugned order permitted the respondents to prove the 'will' in question by way of secondary evidence.

Learned counsel for the petitioners *inter alia* contends that there is a mandatory requirement of law to prove the loss of document which is sought to be proved by way of secondary evidence. In the instant case, trial Court failed to appreciate that respondents in their application did not plead or thereafter proved that the original of 'will' in question had lost. In the absence of any such pleading and proof, the application of the respondents to prove the 'will' in question by way of secondary evidence has wrongly been allowed.

On the other hand, learned counsel for the respondents pleaded the legality and validity of the impugned order.

Having given considerable thought to the submissions made by both the sides, this Court finds that instant petition is completely devoid of any merit for the reasons to follow.

In their application, respondents specifically pleaded that the original 'will' was produced by them before the revenue authorities for sanctioning of mutation and thereafter it lost. This plea in the application is sufficient to permit the respondents to prove the 'will' in question by way of secondary evidence.

Only formality was required for the respondents to examine

anyone of them to depose before the Court that the original 'will' had lost

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and nothing more. However, the said exercise could not have served any purpose, rather had delayed the trial. In case, respondents had filed affidavit supporting the contents of their application that was more than sufficient to allow their prayer. Even otherwise, no objection was raised before the trial Court by the petitioners for not filing any affidavit supporting the contents of the application. Therefore, this plea cannot be permitted to be raised before this Court.

I have gone through the impugned order and find no illegality or perversity in the same.

Dismissed.

June 01, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.