

In the High Court of Punjab and Haryana at Chandigarh

.....

Civil Revision No.5726 of 2015

.....

Date of decision:30.5.2018

Shishpal

.....Petitioner

v.

Dholan Devi and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Ram Avtar Sheoran, Advocate for the petitioner.

Mr. Shailender Kashyap, Advocate for respondent 1.

Respondents No.2 to 4 ex parte.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 226/227 of the Constitution of India for setting aside the impugned order dated 25.8.2015 (Annexure-P.2) passed by the learned Civil Judge (Junior Division), Sirsa, whereby the application of the petitioner to lead secondary evidence of the Will dated 11.6.2002 was dismissed and further directing the Court below to allow the petitioner to lead secondary evidence.

Notice of motion was issued in this case.

Mr. Shailender Kashyap, learned Advocate has put in appearance on behalf of respondent No.1 and contested this petition.

Remaining respondents did not appear and they were proceeded against ex

parte.

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

From the record, I find that during the pendency of the suit, an application had been filed by the defendants (petitioner herein) for leading secondary evidence qua the Will No.25 dated 11.6.2002 registered in the office of Sub Registrar, Nathusari Chopta, District Sirsa, executed by Shri Moti Ram in favour of defendants No.1 and 2-applicants. It has been stated that the plaintiff on 19.3.2013 had filed an application before the Court seeking directions to the defendants to produce the original Will dated 11.6.2002 before the Court. On institution of this application, defendants No.1 and 2 had made statement in the Court to the effect that they were in search of the original Will, but they failed to trace out the same. They further stated in their statement that the original Will shall be produced in the Court immediately after the completion of search. Later on, defendants No.1 and 2 came to know that the aforesaid Will in original is lying placed in the office of Sub Registrar, Nathusari Chopta and in view of the same they summoned the concerned Record Keeper of the office of Sub Registrar, Nathusari Chopta. The concerned Record Keeper appeared in the Court and stated that in their office record copy of the original Will is placed. The applicants stated that the original Will was lost and the same is not traceable.

This application was contested by the defendants and the learned Civil Judge (Junior Division), Sirsa, vide the impugned order dated 25.8.2015 dismissed the application.

I have gone through the impugned order and find that the same is not as per law and illegality has been committed by the lower Court. The document is a registered Will duly registered with the Sub Registrar, Nathusari Chopta. Therefore, the existence of the document cannot be challenged. The other copy of the Will is in the office of Sub Registrar being registered document. The applicants are saying that they have also called the record of Sub Registrar and they have searched the Will but they could not find the same. Before accepting the application to lead secondary evidence, the Court is to see the existence of the document, as well as its loss. The existence of the document is duly proved it being a registered document. The applicants are saying that it has been lost and some evidence has also been produced on the file. The mere fact that the FIR was not lodged etc. is no ground to dismiss the application. Therefore, from the record, I find that if this application is not allowed, the defendants will suffer irreparable loss. If the secondary evidence is allowed, no prejudice is going to be caused to the plaintiff-respondents in this case as they will get the opportunity to cross-examine the witnesses. Whether the Will has been duly executed or not or whether it is surrounded by suspicious circumstances or whether it is to be believed by the Court are the facts which are to be determined by the Court from the evidence which is yet to be produced by the parties.

Therefore, from the above, I find that the impugned order passed by the learned Civil Judge (Junior Division), Sirsa, is not as per law and the same is liable to be set aside.

Finding merit in this civil revision petition, the same is

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accordingly allowed and the impugned order dated 25.8.2015 passed by the learned Civil Judge (Junior Division), Sirsa, is set aside. The application filed by the petitioner for leading secondary evidence is allowed subject to proof of loss.

May 30, 2018.

(Inderjit Singh)
Judge

hsp

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