

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.628 of 2018

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Date of decision:16.5.2018

Gurbachan Kaur

.....Petitioner

v.

Manjit Kaur and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Vikram Anand, Advocate for the petitioner.

Mr. Rajinder Goyal, Advocate for respondents No.1 to 5.

Mr. Vinish Singla, Advocate for respondent No.6.

.....

Inderjit Singh, J.

Gurbachan Kaur-petitioner/plaintiff has filed this civil revision petition against Manjit Kaur, Sukhdev Singh and Karaj Singh-respondents/defendants and Sharanjit Singh, Baljit Kaur and State Bank of India-proforma respondents/defendants under Article 227 of the Constitution of India for setting aside the impugned order dated 2.12.2017 (Annexure-P.6) passed by the learned Additional Civil Judge (Senior Division), Sultanpur Lodhi, District Kapurthala, vide which the application filed for getting permission to lead secondary evidence by present respondent/defendant No.2 has been allowed illegally and unlawfully and not in accordance with settled law.

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Notice of motion has been issued in this case.

Mr. Rajinder Goyal, learned Advocate has put in appearance on behalf of respondents No.1 to 5 and Mr. Vinish Singla, learned Advocate has appeared for respondent No.6 and contested this civil revision petition.

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

From the record, I find that Gurbachan Kaur-plaintiff (petitioner herein) filed a suit against Manjit Kaur and other-defendants for declaration to the effect that plaintiff, defendants and proforma defendants No.4 and 5 are natural legal heirs of deceased Pargat Singh and the so-called unregistered Will dated 26.6.2009 allegedly executed by Pargat Singh in favour of defendants No.1 to 3 is false, fictitious, fabricated, bogus and is a created document and has got no effect upon the right of the plaintiff and the mutation No.305 dated 1.2.2000 in respect of land is false, illegal, bogus, null and void which has been effected on the basis of so-called unregistered Will.

During the pendency of the suit, an application had been filed for leading secondary evidence by defendant No.2 on the ground that Pargat Singh-husband of defendant No.1 and father of defendants No.2 and 3 executed a Will dated 26.6.2009 in favour of defendants No.1 to 3. Defendant No.2 was on his way to meet his counsel in the Court, but, unfortunately the said Will fell somewhere on the way. Defendant No.2 came to know about loss of said Will when he reached Civil Courts, Sultanpur Lodhi. Defendant tried hard to search for and discover the same, but, could not succeed to find the same in spite of making a lot of efforts

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and search. Hence, the application was filed to allow secondary evidence of the Will dated 26.6.2009.

In the reply, the case of the plaintiff was that application has neither been supported by affidavit nor properly verified etc. It had been contended that the alleged Will dated 26.6.2009 in favour defendants No.1 to 3 is false, fabricated and is a created document. It had been further contended that as per Evidence Act, certified copy of original may be produced for the purpose of secondary evidence whereas defendants want to submit photo copy of the alleged Will which is not permissible.

After hearing learned counsel for the parties, the learned Additional Civil Judge (Senior Division), Sultanpur Lodhi, vide impugned order dated 2.12.2017 allowed that application. A perusal of the impugned order shows that no illegality has been committed by the learned lower Court for accepting this application. The execution of the Will is *prima facie* proved as the mutation has been entered by the Revenue Authorities on the basis of this Will. Secondly, the plaintiff herself in her suit has challenged the unregistered Will dated 26.6.2009. The loss of the Will has been shown by the applicant-defendant No.2 that it had been lost when he was going to meet his counsel in the Civil Court.

Keeping in view the above facts, I find that the mutation had already been sanctioned on the basis of this unregistered Will and there is also endorsement on the mutation to the effect that Will was got scribed by one Sahib Singh. When the original Will has been stated to be lost, therefore, it is to be proved only by way of secondary evidence. Hence, from the above discussion, I find that the impugned order passed by the

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lower Court is correct as per law and no illegality has been committed by the learned lower Court while passing this order, which does not require any interference from this Court.

Therefore, finding no merit in this civil revision petition, the same is dismissed.

May 16, 2018.

(Inderjit Singh)
Judge

hsp

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