

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

**CR No.7009 of 2011 (O&M)
Date of decision : January 24, 2018**

Jaspal and others

..... Petitioners

Versus

Raj and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anupam Bhardwaj, Advocate for the petitioners.

Mr. K.S. Rekhi, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 31.10.2011 (Annexure P-5), passed by learned Civil Judge (Jr. Divn.) Ajnala, vide which an application filed by the defendants-petitioners for permission to lead secondary evidence regarding the Will dated 12.01.1976, was dismissed.

I have heard learned counsel for the parties and have also examined the impugned order.

A perusal of the impugned order shows that the plaintiffs-respondents have filed a suit for declaration claiming ownership to the extent of 1/5th share of the ancestral/joint Hindu family property and also challenged the unregistered Will dated 12.01.1976 regarding the inheritance of Sohan Lal. It is claimed that the Will is the result of fraud,

misrepresentation and mutation sanctioned on the said basis, is illegal. The defendants-petitioners claimed that the original Will was handed over to the revenue authorities for sanctioning the mutation, the same is not traceable. Therefore, they want to lead secondary evidence. The trial court observed that the case pertains to the year 2006 and falls in the list of 100 old samadhan cases and that the application has been filed after availing more than five opportunities by the defendants-petitioners to lead their evidence. Therefore, it is belated stage. Consequently, it was dismissed.

I am of the view that the fact that the case falls in the list of 100 old samadhan cases, is no ground to decline the prayer of the defendants-petitioner made in the said application. The delay in filing the application could be considered but it is not the sole ground to dismiss the same. The averments made in the plaint shows that the plaintiffs-respondents admitted that the Will is dated 12.01.1976 and they have challenged the same. The defendants-petitioners now want to prove the same by leading secondary evidence.

In the circumstances, the present revision petition is allowed and the application for leading secondary evidence for Will dated 12.01.1976 is allowed. The defendants-petitioners are allowed to lead secondary evidence regarding the unregistered Will dated 12.01.1976, subject to proof of existence and loss of original, the evidence regarding which shall be led in the main case. If during the final hearing, the court finds that the petitioners-defendants have proved the existence and loss of original, the same will be admitted into evidence, otherwise the same will be discarded.

Needless to say that the plaintiffs-respondents shall also be given opportunity to rebut the said evidence, led by the defendants-petitioners.

January 24, 2018

sarita

Whether speaking / reasoned

Whether Reportable:

(KULDIP SINGH)

JUDGE

Yes

No