

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

**122**

**RSA No.1007 of 2018 (O&M)**

**Date of Decision : 16.02.2018**

Jatinder Kumar

..... Appellant

Versus

Satya Devi

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

**\*\*\***

Present : Mr. Alok Mittal, Advocate  
for the appellant.

**\*\*\***

**AJAY TEWARI, J. (Oral)**

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit filed by the respondent wherein she had claimed that she was the owner of the property left behind by her son Kamal Nain Sharma. She had further averred that mutation had been sanctioned in favour of the appellant on the basis of some false and fabricated Will.

The case of the appellant was that Kamal Nain Sharma-the deceased had executed a Will in his favour which was registered after his death. To prove the Will the appellant examined the marginal witnesses and the Clerk of the Registration office. Before the trial Court he moved an application for secondary evidence praying that the original Will had been deposited in the office of the Sub Registrar and had never been returned to him and therefore, he prayed for permission to lead secondary evidence of the same. That application was rejected and ultimately the suit was

dismissed. The appellant filed an appeal and along with that filed an application (this time for additional evidence) praying that actually he had chanced upon the Will which was lying in an old almirah and prayed for permission to produce the same. The lower Appellate Court rejected that application by holding that the Will which was being sought to be produced as the original was not even stamped; that the appellant had earlier moved an application for secondary evidence taking a totally different ground and thirdly that there was no due diligence.

Learned counsel has argued that the finding of the Appellate Court that the Will did not bear the stamp of the Registrar office is incorrect because the will which was produced not only carried the stamp but also the number of the Registration. As per him the conduct of the appellant clearly shows that he was not negligent and wanted to produce the Will. He has prayed that the Will has not been tested and therefore, one opportunity should have been granted by the Appellant Court to the appellant to prove the Will.

In my considered opinion, the argument can not be accepted. Even if it is held that one of the three reasons given by the Appellate Court to discard the application under Order 41 Rule 27 is incorrect there can be no escape from the fact that before the trial Court the appellant had taken a totally different stand and prayed for producing secondary evidence while before the Appellate Court his case was that the Will had been found. Moreover this chronology of fact clearly shows the lack of due diligence by the appellant. Once the appellant was basing his title on the Will due diligence required that he should have kept the Will in safe custody, in any

served upon him but even if these two facts are ignored the application moved by him before the Appellate Court clearly reveals that even that time the Will was discovered by accident and not by due diligence.

Consequently, no fault can be found with the order of the Appellate Court rejecting the application for additional evidence and once that is so and the original Will has not been produced on the record no fault can be found with the findings of the Courts below decreeing a suit.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

( **AJAY TEWARI** )  
**JUDGE**

**16.02.2018**

*Pooja sharma-I*

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No