

CR-4316-2018 (O&M)

219

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

CR-4316-2018 (O&M)

Date of decision : 29.04.2019

Gurcharan Singh

... Petitioner

Versus

Surjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Vinod Khunger, Advocate and
Sahil Khunger, Advocate
for respondent No.1.

AMIT RAWAL, J.

The present revision petition, at the instance of the defendant, is directed against the impugned order dated 29.05.2018, whereby the photocopy of the disputed Will dated 27.09.1971 exhibited as D7, has been de-exhibited on the premise that the same was not being import of the order allowing the secondary evidence.

Mr. K.B. Raheja, learned counsel appearing on behalf of the petitioner-defendant submitted that respondent No.1-plaintiff filed the suit for declaration claiming the property on the basis of the natural succession, whereas the defendant propounded the valid and registered will dated 27.09.1971 of late Bhag Singh and ownership on the basis of the aforementioned Will. During the stage of the evidence, an application under Section 65 of the Indian Evidence Act, was submitted as the original

CR-4316-2018 (O&M)

was not traceable and the same, vide order dated 12.03.2018 (Annexure P-1), was allowed, whereby the Court below directed the applicant to bring on record the certified copy of the disputed Will with a rider that the contents of the Will would not be admissible in evidence, unless its exhibition was duly proved as per law. In the year 1971, only one copy of the Will used to be prepared and signed and attested by the witnesses and other was kept in the office of the Sub-Registrar. Signatures of the witnesses were not obtained on the second copy kept in the office of the Sub-Registrar. Since the certified copy did not have the signatures, the petitioner-defendant had the photocopy of the Will (Ex.D7). There is no provisions in the Code of Civil Procedure for de-exhibition of the document. The Court below could not have entertained the application of the plaintiff. The trial Court did not consider that it was for the defendant to prove and produce the evidence of his choice as photocopy of the Will was necessary and essential, therefore, the impugned order, under challenge is not sustainable in the eyes of law. The registered document is a public document and is *per se* admissible in evidence. In support of his contentions, relies upon the following ratio decidendi culled by this Court:-

- 1. “Santokh Singh V/s Bishan Singh” 1994(1) RRR 630,**
- 2. “Gajjan Singh V/s Virsa Singh and others” 2007 (3) RCR (Civil) 3.**
- 3. “Meena Rani V/s Sham Lal” 2008 (2) RCR (Civil) 254**
- 4. “Smt. Jaswant Kaur V/s Satish Kumar Aggarwal and others” 2016 (4) PLR 632**

Per contra, Mr. Vinod Khunger and Mr. Sahil Khunger, learned counsels appearing on behalf of respondent No.1-plaintiff, submitted that

CR-4316-2018 (O&M)

the impugned order under challenge, is perfectly legal and justified, once the photocopy of the Will (Ex.D7) was not permissible in view of the order allowing the secondary evidence, thus, urges this Court for dismissal of the present revision petition as there is no illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Raheja.

It would be apt to reproduce the relevant portion of the order dated 12.03.2018 allowing the application for secondary evidence, which reads as under:-

"However, as in the present case, the Will is a registered one as alleged by the applicant, the applicant is directed to bring on record the certified copy of the said registered will. The applicants strictly directed that the contents of the said Will would not be admissible in evidence unless its execution is duly proved by the applicant as per law. Thus, the applicant is granted liberty to produce the certified copy of the said Will subject to it being duly proved as law. The application stands disposed of, accordingly.

From perusal of the aforementioned findings, it is evident that the petitioner-defendant was given liberty to place on record the certified copy of the Will, subject to its proof. No witness would be able to prove the signatures from the photocopy of the document, even respondent No.1-plaintiff would not be in position to take the assistance of the Expert. No doubt, there is no provision in the Code of Civil Procedure for de-exhibiting of the document, but the objection can always be taken as mere exhibition of the document does not dispense with its proof, in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in **"Sait Tarajee Khim**

CR-4316-2018 (O&M)

Chand and others Vs. Yelamarti Satyam and others” 1971 AIR SC 1865.

In such circumstances, the objection of the plaintiff to its proof would be kept alive, instead of treating the impugned order as de-exhibition of the document. The trial Court below will decide the authenticity of the document at the final stage keeping in view the observations made here-in-above as well as in terms of the order dated 12.03.2018.

Resultantly, the present revision petition stands dismissed.

29.04.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**