

**201**

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

**Civil Revision No.6947 of 2016 (O&M)  
Date of Decision: 27.02.2019**

**Gurmeet Kaur** .....**Petitioner**  
**Vs**  
**Sukhpal Kaur and others** ....**Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present:Mr. Ranjit Singh Sidhu, Advocate for  
Mr. G.S. Nahel, Advocate  
for the petitioner.

Mr. S.P.K Phoolka, Advocate for  
Mr. P.K.S. Phoolka, Advocate  
for respondents No.1 and 3.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioner has preferred this revision petition against the order dated 15.09.2016 passed by the Addl. Civil Judge (Sr. Divn.) Phul, whereby the onus to prove issues No.1 and 2 was shifted upon her and she was directed to lead evidence firstly in respect of proving execution of Will dated 23.12.2011 of which she was the propounder.

[2]. In a suit for declaration filed by the plaintiff, petitioner is defendant No.1. Petitioner/defendant No.1 is the propounder of Will dated 23.12.2011 which was claimed to be forged and fabricated by the plaintiff/respondent No.1.

[3]. Vide the impugned order, the trial Court has directed

the petitioner/defendant No.1 to lead evidence being propounder of the Will at the first instance.

[4]. In view of ratio laid down in **Subhash Chander and others vs. M/s Active Promoters Pvt. Ltd., 2015(1) RCR (Civil) 62**, it can be seen that when specific allegations have been made by the plaintiff in respect of document being fraudulent, then the burden shifts upon defendant No.1/propounder of the document to prove the same to be genuine, because it is a settled principle of law that the person, who claims some right on the basis of document, is required to positively prove the same.

[5]. In **Thiruvengada Pillai vs. Navaneethammal and another, 2008(2) RCR (Civil) 262** the Hon'ble Apex Court held that when the execution of an unregistered document produced by the plaintiff was denied by the defendant, then asking the defendant to establish the document to be forged was not a sound proposition. The Courts below proceeded on the basis that it is for the party, who asserts something, to prove that thing; and as the defendant alleged that the agreement was forged, it was for him to prove it. The Hon'ble Apex Court held that the Courts below had lost sight of the fact that the party who propounds the document will have to prove it. In the said case, it was the plaintiff who had come to the Court alleging that

the defendant had executed an agreement to sell in his favour. Defendant therein denied the same. The burden was on the plaintiff to prove that the defendant had executed the agreement and not on the defendant to prove the negative.

[6]. In **Pritam Singh vs. Raj Kumar, 2013(4) R.C.R. (Civil) 126**, the Court considered the provision in terms of Section 102 of the Evidence Act and held in para No.7 of its order as under:-

*"7. The test of how a burden is discharged is brought through Section 102 of the Evidence Act, as follows:-*

*"102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."*

*The test shall be as to what is to happen if no evidence is given on either side and that is how the burden is to be seen. A person, who was relying therefore that there was a valid service of notice, and yet another person contending that he was not served at all and that he never refused, if both the parties did not give any evidence, it would have only resulted in a finding that there was no service. The burden, in this case, must therefore be on the person, who affirmed that there was a valid service which was refused and it will be an untenable argument to make that the defendant must put the court bailiff in witness-box as his witness to deny that he did not serve the summons and that the defendant did not refuse to receive the same. It will be inverting a legal logic to levels which the statute does not provide for. I will, therefore, reject the argument that there had been any valid service of notice."*

[7]. In view of aforesaid ratio of **Pritam Singh's case** (supra) it can be noticed that in terms of Section 102 of the Evidence Act, the burden of proof in a suit or proceeding shall

lie on that person who would fail if no evidence at all were given on either side. In the cited case, there was a dispute regarding valid service which was denied by the opposite party. If both the parties did not give any evidence, it would have only resulted in a finding that there was no service. The burden, in that case, must therefore be on the person, who affirmed that there was a valid service which was refused and it was held that defendant was not required to put the Court Bailiff in witness-box as his witness to deny that he did not serve the summons and that the defendant did not refuse to receive the same. In that eventuality, it will be inverting a legal logic to levels which the statute does not provide for. The Court in the aforesaid proposition, rejected the arguments of valid service propounded by the plaintiff as against the defendant who had denied the same.

[8]. Sections 101 and 102 of the Evidence Act would assume importance in the present context. Section 101 of the Evidence Act provides for initial burden of proof. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. If a person desires a Court to give judgment that another person be punished for a crime, then the first

person must prove that the second person has committed the crime. Section 102 of the Evidence Act deals with the proposition on whom burden of proof lies. The initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

[9]. For the reasons recorded hereinabove, it can be appreciated that a person, who claims some right on the basis of document, is required to prove the same positively. Since the defendant No.1 has relied upon the Will in question, therefore, execution of Will has to be proved by the defendant No.1 positively at the first juncture and thereafter the plaintiff would be required to prove the same as forged and fabricated.

[10]. In view of above, I find that there is no error of jurisdiction in the impugned order passed by the trial Court. This revision petition is accordingly dismissed.

February 27, 2019

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No