

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

Sr. No.203

C.R. No.8291 of 2016 (O&M)

Date of decision: 31.01.2019

Neeta Devi

....Petitioner

versus

Raj Bala @ Bala Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

Mr. Rajinder Goyal, Advocate
for respondents No.5 and 7.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 18.10.2016 passed by the Additional Civil Judge (Senior Division), Moonak (for short – the Trial Court) through which respondents No.5 and 7 have been permitted to lead evidence to prove the contents of a Will dated 25.09.2003 of Chander Bhan which was relied upon by them in their written statement.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein to be declared owner in joint possession of 1/4th share of agricultural land detailed and described in the head note of the plaint (for short – the suit property). On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and filed their

respective written statements. Respondents No.1 to 4 admitted the petitioner's claim whereas, respondents No.5 and 7 contested her suit. Rather, respondents No.5 and 7 staked their claim to the ownership of the suit property through a Will dated 25.09.2003 by Chander Bhan, who was the predecessor-in-interest of the parties as also owner in possession of the suit property. To file an effective rejoinder to the stand taken by respondents No.5 and 7, the petitioner filed an application before the Trial Court seeking issuance of a direction to respondents No.5 and 7 to produce the original Will set up by them in their written statement. After seeking a few adjournments, respondents No.5 and 7 admitted before the Trial Court that they were not in possession of the Will in question and in view of such stand taken by them, the Trial Court, through order dated 21.07.2014 precluded them from placing on record the Will in question without obtaining prior permission of the Court. Thereafter, the Trial Court framed issues on which the petitioner/plaintiff led her entire evidence. While respondents No.5 and 7 were in the midst of leading their evidence, an application was filed by them through which they sought permission of the Trial Court to prove the contents of the Will set up by them by leading of oral evidence. By referring to the provisions of Section 63 (5) of the Indian Evidence Act, 1872 (for short – the Act), the aforesaid application filed by respondents No.5 and 7 was allowed by the Trial Court through the order which is the subject matter of challenge in the present proceedings.

Learned counsel for the parties have been heard.

To oppose the case set up by the petitioner/plaintiff as also to stake their own claim upon the suit property respondents No.5 and 7 have placed reliance on a Will dated 25.09.2003 purportedly executed by

Chander Bhan, the predecessor-in-interest of the parties. They have admitted before the Trial Court that they are not in possession of the Will. However, DW-2 Amar Singh stated before the Trial Court that the aforesaid Will of Chander Bhan did exist. Mutation No.4637 dated 11.01.2008 entered on the basis of the Will dated 25.09.2003 also acknowledged its existence. Patwari Bhagwan Dass also stated before the Trial Court that as per the revenue record the original Will of Chander Bhan dated 25.09.2003 had been returned by him to Ram Niwas, who the petitioner's uncle. The Trial Court being prima facie satisfied with regard to the existence of the Will in question, after referring to the provisions of Section 63(5) of the Act, permitted respondents No.5 and 7 to prove the contents of the Will through leading of oral evidence.

Section 63(5) of the Act, reads as under:-

“63. Secondary Evidence.- Secondary evidence means and includes-

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(5). oral accounts of the contents of a document given by some person who has himself seen it.”

As per the afore-quoted provision, secondary evidence means and includes oral accounts of the contents of a document given by some person who has himself seen the document. The document in question is the Will dated 25.09.2003 of Chander Bhan – the predecessor-in-interest of the parties. Admittedly, respondents No.5 and 7 do not possess either of original or a copy of the Will in question. On the other hand, the petitioner and respondents No.1 to 4 deny the existence of such a document. However, in the light of the evidence which had come on record before the Trial Court in the shape of testimony of DW-2 Amar Singh, who has acknowledged that

such a Will of Chander Bhan was in existence; mutation No.4637 dated 11.01.2008 which had been entered on the basis of the aforesaid Will and the statement of Patwari Bhagwan Dass before the Trial Court acknowledging the receipt and return of the original Will in question, no error is found in the order of the Trial Court by permitting respondents No.5 and 7 to prove the contents of the aforesaid Will through leading of oral evidence.

In view of the above, the present petition is dismissed.

It is clarified that through this order no opinion is expressed by this Court on the genuineness and validity of the Will in question or its evidentiary worth. The same would be considered by the Trial Court at the time of final adjudication of the suit after sifting the evidence led by both parties.

(DEEPAK SIBAL)
JUDGE

January 31, 2019
Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No