

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8359-2016

Date of Decision:-27.11.2019.

Rani and another

.....Petitioners

Versus

Vakil Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Baltej Singh Sidhu, Advocate for the petitioners.
Mr. Jasmail Singh Brar, Advocate for respondent No.1.

SANJAY KUMAR, J. (Oral)

The petitioners are the plaintiffs in CS No.359 of 03.09.2013 on the file of the learned Civil Judge (Junior Division), Gidderbaha (hereinafter, 'the trial Court'). They filed this revision under Article 227 of the Constitution aggrieved by the order dated 11.11.2016 (Annexure P-9) whereby the trial Court allowed the application filed by the first respondent herein, the first defendant in the suit, under Section 65 of the Indian Evidence Act, 1872 (hereinafter, 'the Act of 1872'), seeking to lead secondary evidence in relation to the Will dated 12.01.1985.

Parties shall hereinafter be referred to as arrayed in the suit.

Be it noted that one of the suit prayers of the plaintiffs was to declare that the said Will was illegal, null, void, ineffective and inoperative *qua* their rights and to the extent of their share in the suit property. It appears that the plaintiffs filed an application in the suit earlier, seeking a direction to the first defendant therein to produce the original of the said Will, but by order dated 19.03.2015 (Annexure P-6), the trial Court dismissed the application taking note of the reply filed by the first defendant that the original Will had been given to the Revenue

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Department while effecting mutation and the contrary fact that the entry in the mutation proceedings bearing No.3730 was to the effect that the original Will was returned thereafter. In the light of this circumstance, the trial Court opined that the first defendant should be barred from producing the original Will in his favour and disallowed the plea of the plaintiffs.

Thereafter, the first defendant filed the subject application seeking to produce secondary evidence to prove the said Will. Therein, he reiterated his earlier stand that the Will was not returned by the Revenue Department after effecting mutation. He also referred to the deposition of the Revenue Department's witness who had produced the Parat Sarkar of the mutation and was examined on 07.05.2016, who stated on oath that no documents were produced at the time of effecting mutation. He accordingly sought leave to adduce secondary evidence.

The trial Court allowed the subject application provisionally, stating that it was for the first defendant to prove the loss of the original Will under Section 65 (c) of the Act of 1872 and that such loss was not due to his own fault. The trial Court only permitted the marking of the document as an exhibit while recording the objections raised in that regard by the plaintiffs. The admissibility of the document and the proof thereof in relation to the original were left open to be addressed on merits at the stage of final arguments in the suit.

Mr. Baltej Singh Sidhu, learned counsel for the plaintiffs, would contend that unless the pre-requisite condition of establishing that the original document was either destroyed or lost or the first defendant established that for reasons not arising from his own default or neglect, he could not produce the original document within reasonable time, the

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question of adducing secondary evidence of such a document would not arise. He would place reliance upon ***Rakesh Mohindra Vs. Anita Beri and others [2015 (4) RCR (Civil) 1023]*** in this regard. Learned counsel would further point out that sufficient pleadings were not advanced by the first defendant in support of his application filed under Section 65 of the Act of 1872, inasmuch as the averments made therein were vague. He would rely upon ***State of Rajasthan and others Vs. Khemraj and others [2000(9) SCC 241 : 2000(2) JT 40]***, wherein the Supreme Court took note of a similar situation and permitted filing of a fresh application.

Having heard both the learned counsel and upon perusing the record, this Court is of the opinion that no adjudication is called for at this stage. As already noted *supra*, the trial Court merely marked the document in evidence while recording the objections raised by the plaintiffs. The trial Court left open the issue of admissibility of the document offered in secondary evidence. The trial Court also left open the question as to whether the said document was sufficiently proved. As these aspects would be looked into by the trial Court at the time of final arguments, it would be open to the plaintiffs to advance all the arguments presently raised before this Court at that stage. Leaving it open to the plaintiffs to do so, thereby inviting adjudication on these aspects by the trial Court, the Civil Revision is disposed of.

No order as to costs.

(SANJAY KUMAR)
JUDGE

November 27, 2019.

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Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.