

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

**SAO No. 71 of 2018 (O&M)
Date of Decision: May 15, 2019**

Krishana

.....APPELLANT

VERSUS

Ram Chander since deceased through his LRs and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sumit Sangwan, Advocate
for the appellant.

Mr. Akshay Kumar Goel, Advocate
for respondent No. 1.

SURINDER GUPTA, J.(Oral)

Heard.

Learned counsel for the appellant submits that the Ist Appellate Court has remanded the case with the observations that the application of the plaintiff seeking permission to prove Will No. 131 dated 23.03.1972 through secondary evidence was not decided. Vide this application plaintiff had in fact sought to summon a witness to prove this Will by way of secondary evidence and then examine the other witnesses of the Will. Witness sought to be summoned was called and examined and other witnesses of Will were also produced by him which virtually tantamount to allowing of his application. He has no objection if this application dated 10.10.2012 (Annexure A-1) be deemed as permitted and the evidence led by the plaintiff to prove the Will dated 23.03.1972 by way of secondary evidence be read in evidence. The appellant will not raise any objection

against evidence produced by plaintiff to prove the Will by secondary evidence by treating his application to this effect as allowed.

Learned counsel for the respondent submits that evidence to prove the Will by way of secondary evidence was produced before the trial Court but same was not considered and the Will was discarded on the ground that no permission to prove it by way of secondary evidence had been allowed.

In view of the submissions of learned counsel for the appellant that he has no objection if the application dated 10.10.2012 be deemed as allowed and the Ist Appellate Court be directed to proceed further to decide the appeal on merits, the evidence produced by the plaintiff to prove the Will be considered as if the permission to prove the same by way of secondary evidence has been allowed.

This appeal is accepted and the order passed by the Ist Appellate Court remanding the case to the trial Court is modified as per the submissions of learned counsel for the parties. The Ist Appellate Court shall proceed further to decide the appeal on merits and while appreciating the evidence on record, the application dated 10.10.2012 filed by the plaintiff seeking permission to prove Will No. 131 dated 23.03.1972 shall be deemed as allowed. Parties are directed to appear before the Ist Appellate Court on 30.05.2019, on which date the file of appeal will be taken on Board and proceeded further as per the above observations.

May 15, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE