

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

108

CR-380 of 2017 (O&M)
Date of decision: 17.10.2022

Jasbir Singh and others

..Petitioners

Versus

Hardeep Kaur and otehrrs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satbir Rathore, Advocate
for the petitioners.

Mr. Manuj Sharma, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

The defendants in a suit for grant of decree of declaration assails the correctness of an interlocutory order passed by the trial court permitting the plaintiff to prove the Will by leading the secondary evidence.

The learned counsel representing the petitioners contends that without the plaintiff having, at the first instance, called upon to prove the existence and loss of the Will, the Court was erroneous in permitting the permission to lead secondary evidence.

After discussing the various provisions of the Civil Procedure Code, 1908, the Indian Evidence Act, 1872 and the High Court Rules and Orders, this court in **Vinod Kumar vs. Satbir Singh** (Civil Revision No.2575 of 2020, decided on 03.03.2021) and **Madan vs. Shankar and others** (RSA-327-1989 decided on 01.11.2018) has held that there is no such provision in any of the said laws for filing an application for permission to lead secondary evidence. The Bombay High Court, on 10.11.2017, while deciding Civil Revision application No.82 of 2016, directed the trial courts

to stop the practice of requiring applications for permission to lead secondary evidence, particularly when it is not supported by any provision of law. The Hon'ble Supreme Court in **Dhanpat vs. Sheo Ram, 2020 SCC Online SC 606**, has, also, held on similar lines.

Keeping in view the aforesaid position, the revision petition is disposed of while directing the trial Court to permit the plaintiff to lead evidence. After the evidence has been led, the Court shall examine whether such evidence is primary or secondary. If it is found that the evidence led is secondary, then the Court shall further examine whether such evidence is admissible as per the parameters laid down in the Indian Evidence Act, 1872.

All the pending miscellaneous applications, if any, are also disposed of.

October 17, 2022

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**(ANIL KSHETARPAL)
JUDGE**

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>