

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

CR-5907-2018 (O&M)

Date of decision: 10.11.2022

Sanjiv Kashyap

....Petitioner

Versus

Rohit Kashyap and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satbir Rathore, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The petitioner herein, is a defendant, in a suit for possession by way of partition of the joint property, filed by his brother and sisters. While filing the written statement, the petitioner propounded the alleged Will dated 07.01.2012, executed by his father. On an application of the plaintiff, to direct the defendant to produce the Will, the petitioner stated that the original Will is not traceable and was misplaced while shifting the household goods. The trial court, after noticing that fact passed an order on 24.11.2017 precluding the defendant from bringing on record the Will and the other documents. After the plaintiffs' concluded their evidence, the defendant produced the Will and attempted to examine both the attesting witnesses. The court has refused to permit the defendant to examine the witnesses on the ground that he has already been precluded from the production of the Will and the consequential evidence.

Despite service of notice, the respondents have not opted to enter appearance.

Heard the learned counsel representing the petitioner at length and with his able assistance perused the paperbook. Learned counsel representing the petitioner contends that the court has wrongly debarred the petitioner from leading evidence, particularly when the aforesaid fact is already stated in the written statement. He submits that the Will was not traceable when the application for its production was filed by the plaintiff, however, the trial court was not correct in debarring him for all times to come.

On reading of both the orders dated 24.11.2017 and 20.08.2018, it is evident that the court has held that an adverse inference is required to be drawn against the petitioner. The genesis of drawing an adverse inference against a party is available in Illustration (g) to Section 114 of the Indian Evidence Act, 1872. This is based upon the rule of best evidence. The party to the litigation is required to produce the best available evidence to prove a fact. However, such an inference can be drawn by the court only when both the parties have led their evidence and finally the court while deciding the case concludes that a particular party is guilty of withholding the best evidence. There may be a genuine case where a particular piece of evidence is not available or traceable at a particular time, however, there may be another case where a party is intentionally withholding the document in order to deprive the other party from leading evidence. However, on reading of both the orders passed by the court below, it is evident that the court has not adverted to the aforesaid facts.

Keeping in view the aforesaid discussion, the matter is remitted back to the trial court to redecide the question, “Whether in the facts and circumstances of the present case, the defendant should be debarred from producing the Will and examining the attesting witnesses?”

Disposed of.

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

10.11.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE