

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)**

CR-679-2022
Decided on : 24.03.2022

Narinder Singh

..... Petitioner

Versus

Mohinder Kaur and other

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arnav Sood, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 17.01.2022 passed by Addl. Civil Judge, Sr. Division, Balachaur, District SBS Nagar vide which the application for leading secondary evidence filed by the petitioner in Civil Suit No.961 of 2013 was dismissed.

Learned counsel for the petitioner submits that the petitioner filed a civil suit for declaration or in the alternative for possession of the suit land on the basis of a Will dated 28.04.2012 executed by his grand father Tulsa Singh in his favour. On 06.08.2015 while the petitioner was on his way to the Court complex, the hand bag, which he was carrying with him and which contained the above-said original Will, pass book and cheque book, fell down on the road. Resultantly, the original Will was lost. Learned counsel submitted that despite earnest efforts made by the petitioner to trace out the hand bag, he was unable to do so, as a result of which, he got a DDR registered at Police Station Balachaur. Learned

counsel further submitted that the trial Court while passing the impugned order failed to appreciate that since the original Will had been lost, there was no other way to prove that Will except by way of secondary evidence. Learned counsel still further submitted that declining his prayer for leading secondary evidence with respect to the original Will in the aforementioned circumstances would greatly prejudice his case and cause grave miscarriage of justice.

Heard learned counsel and perused the impugned order.

It has not been disputed rather it is a matter of record that the alleged Will dated 28.04.2012 qua which the petitioner was wanting to lead secondary evidence, is an unregistered document, which was admittedly executed subsequent to a registered Will, in which no share whatsoever in any moveable or immoveable property was given in favour of the petitioner. The version put-forth by the petitioner does raise a big question mark qua the execution of the Will in his favour, more so, when the alleged unregistered Will dated 28.04.2012 is completely silent about the earlier registered Will. Not only this, the thumb marks on the said Will are not even legible. Still further, the delay of almost one month in the lodging of DDR at Police Station Balachaur after the petitioner lost the original Will on 06.08.2015 is yet another suspicious circumstance.

Undoubtedly, the genuineness or otherwise of a document would be a matter to be appreciated during trial. The Court cannot be expected to turn a blind eye to the suspicious circumstances while adjudicating upon an application for leading secondary evidence.

As a sequel to the above, this Court does not find any merit in

the instant petition and same stands dismissed accordingly. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

24.03.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No