

CR-1133-2020(O&M) and  
CR-1153-2020(O&M)

-1-

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

(1) CR-1133-2020(O&M)

Vijay Kumar

...Petitioner

Versus

Parkash Krishan and another

...Respondents

(2) CR-1153-2020(O&M)

Vijay Kumar

...Petitioner

Versus

Sudarshan Kaushal and others

...Respondents

**Date of decision:-15.11.2022**

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.R.S. Rangpuri, Advocate  
for the petitioner in both petitions.

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**H.S. MADAAN, J.**

1. Vide this order, I shall dispose of two civil revision petitions  
i.e. CR-1133-2020 and CR-1153-2020 filed on behalf of  
revisionist/petitioner Vijay Kumar.

2. CR-1133-2020 has been filed for setting aside of impugned  
order dated 23.9.2019 passed by learned Additional Civil Judge  
(Sr.Divn.), Payal in Civil Suit No.1407 of 2014 titled as 'Parkash Krishan

Versus Jai Kumar and another', whereby application under Section 65 of the Evidence Act filed by the plaintiff (herein contesting respondent) had been allowed.

Whereas CR-1153-2020 has been filed for setting aside of impugned order dated 23.9.2019 passed by learned Additional Civil Judge (Sr.Divn.), Payal in Civil Suit No.1278 of 2014 titled as 'Jai Kumar & Anr. Versus Sudarshan Kaushal & Anr.', whereby application under Section 65 of the Evidence Act filed by the defendants (herein respondents) had been allowed.

3. Plaintiff Parkash Krishan had filed a Civil Suit No.1407 of 2014 against defendants Jai Kumar and Vijay Kumar seeking a declaration that he is exclusive owner in possession to the extent of 1/2 share in the property measuring 4 kanals 16 marlas situated at village Ber Kalan, Tehsil Malaudh, District Ludhiana on the basis of registered Will dated 6.9.1991 executed by Sh.Bal Krishan son of Sh.Devki Nandan (real brother of the plaintiff) and defendants have no concern with the said property and that the alleged unregistered Will dated 1.12.2011 by Sh.Bal Krishan is a forged and fabricated document etc.

4. Jai Kumar and Vijay Kumar defendants in Civil Suit No.1407 of 2014 had brought a separate Civil Suit bearing No.1278 of 2014 against Sudarshan Kaushal and Parkash Krishan with regard to that very property claiming themselves to be joint owners in possession on the basis of Will dated 1.12.2011 said to have been executed by Sh.Bal Krishan in their favour and that the alleged adoption deed dated 31.10.2003 by defendant No.2 regarding adoption of defendant No.1 is null and void

besides seeking decree for permanent injunction.

5. On getting notice, the defendants put in appearance.

6. The plaintiff Parkash Krishan in Civil Suit No.1407 of 2014 had filed an application seeking leading of secondary evidence of Will dated 6.9.1991 in his case as well as defendant in connected Civil Suit No.1278 of 2014 filed by Jai Kumar and Vijay against him and Sudarshan Kaushal.

7. The Court had granted the requisite permission to him in both the cases by passing separate orders dated 23.9.2019. For ready reference, the operative part of the part of the order passed in civil suit No.1407 of 2014 is being reproduced as under:

*5. The Ld. Counsel for the defendants had relied upon M/s Enn Ess Electronics Jalandhar & Ors. Versus Smt. Harbans Kaur & Ors. 2009(1) Civil Court Cases 237 (P&H) and Chaman Lal Versus Davin & Anr. 2010(3) Civil Court Cases 601 (P&H). The said case laws are not disputed but same are not applicable to the facts of the present case as in the present case the plaintiff has filed the present suit on the basis of the Will alleged to be executed by Bal Krishan in favour of Parkash Krishan and the said Will to be proved by the plaintiff is itself a notice to the defendants and moreover the nature of the case is such that the defendants are having knowledge that they will be required to produce the Will. As such no notice under section 66 of Evidence Act, 1872 is required to be given to the defendants.*

*6. As the plaintiff is relying upon the Will in order to establish his*

*case as such the present application is allowed to prove the said Will by way of secondary evidence subject to existence and loss of the document. However, these observations of mine shall have no effect on the merits of this case.*

8. Feeling aggrieved by the said orders, the revisionist has filed the instant revision petitions.

9. I have heard learned counsel for the revisionist besides going through the record.

10. The main objection raised by learned counsel for the revisionist is that in terms of Section 66 of the Evidence Act, secondary evidence of the contents of the documents referred to in section 65, clause [\(a\)](#), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is such notice to produce it and in this case no such notice had been given to Jai Kumar or his LRs. Therefore, the trial Court fell in error in granting permission to the plaintiff to lead secondary evidence of the Will.

11. However, I am not convinced by such submissions made by learned counsel for the revisionist because the counsel for the revisionist is not reading Section 66 of the Evidence Act completely. The provision thereto dilates that such notice shall not be required in several eventualities one of which is that when, from the nature of the case, the adverse party must know that he will be required to produce it. As has been rightly observed by the trial Court that plaintiff had filed the suit on

the basis of registered will said to have been executed by Bal Krishan in favour of plaintiff, which was itself a notice to the defendants and the nature of the case is such that defendants have knowledge that they would be required to produce the Will, therefore, there is no necessity of giving notice to defendants. No fault can be found with such approach of the trial Court. Section 65 of the Evidence Act provides that secondary evidence may be given of the existence, condition, or contents of a document (a) when the original is shown or appears to be in the possession or power—of the person against whom the document is sought to be proved.

12. As per the case of the plaintiff the Will is in possession of defendant No.1 Jai Kumar (since dead) and after his death his LRs, who have not produced the original in the Court. Therefore, the plaintiff Parkash Krishan has every right to lead secondary evidence of the Will and the trial Court was justified in granting such permission to him in both the suits. As regards the judgments referred to by learned counsel for the revisionist i.e. **Chaman Lal Versus Davin, 2010(3) RCR(Civil) 519 and M/s Enn Ess Electronics Jalandhar and others Versus Smt.Harbans Kaur and others, 2009(5) RCR(Civil) 130**, those were also relied upon by the revisionist herein before the trial Court. However, those were properly distinguished stating that those were not applicable to the facts of the present cases.

13. The orders passed by the trial Court are quite detailed, well reasoned based on proper appraisal and appreciation of the legal as well as factual position and the same do not suffer from any illegality and infirmity and can certainly be not termed as arbitrary or having been

passed against settled legal principles, which might have called for interference by this Court while exercising jurisdiction under Article 227 of the Constitution of India.

14. Finding no merit in the petitions, the same stand dismissed.

15.11.2022  
Brij

(H.S.MADAAN)  
JUDGE

**Whether reasoned/speaking** : **Yes/No**

**Whether reportable** : **Yes/No**