

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

118

CR-1622 of 2019 (O&M)
Date of decision: 25.08.2022

Krishna Devi

..Petitioner

Versus

Purshotam Dass (deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Pratap Singh, Advocate,
Mr. Anmol Puri, Advocate,
Ms. Tanu Priya Singh, Advocate,
for the petitioner.

Mr. Amit Jain, Sr. Advocate, with
Mr. Dhruv Mittal, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The plaintiff in a suit for grant of decree of declaration assails the correctness of an interlocutory order passed by the trial court permitting the defendants to prove the Will and other documents by leading 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 **Madan vs. Shankar and others (RSA-327-1989 decided on 01.11.2018)** has held that there is no provision 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 defendants 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.

Disposed of accordingly.

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

August 25, 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>