

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4540 of 2018 (O&M)

Date of Decision: 22.08.2023

Smt. Kashmir Kaur (Since Deceased) through her Legal Representatives and
Others

... Petitioner(s)

Versus

Nazar Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Harminder Singh, Advocate
for the petitioner(s).

Mr. Gagandeep Singh Sirphikhi, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The petitioner herein is a plaintiff in the pending suit for the grant of the decree of declaration that she is one of the co-sharers in the suit property. During the pendency of the suit, an application under Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”) was filed for permission to produce and prove the Will dated 23.11.1994, which was alleged to have been executed by Kartar Singh. The trial Court has dismissed the said application. This revision petition has been filed to challenge the correctness of the aforesaid order.

2. In fact, after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, this Court in *Madan vs. Shankar and others (Regular Second*

Appeal No.327 of 1989, decided on 01.11.2018), came to a conclusion that

there is no provision that mandates for filing an application for permission to lead secondary evidence, in order to lead secondary evidence.

3. In Civil Revision Application No.82 of 2016, decided on 10.11.2017, Bombay High Court also held that such applications are being filed under a misconception and it has now become an epidemic. Even the Supreme Court in ***Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606*** has made observations in this regard.

4. In ***Vinod Kumar vs. Satbir Singh (Civil Revision No.2575 of 2020, decided on 03.03.2021)***, this Court has held as under:-

“Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.”

5. Keeping in view the aforesaid observations, this revision petition is partly allowed. The impugned order with regard to the dismissal of the application under Section 65 of the 1872 Act is set aside. The petitioner shall be permitted to lead evidence. The Civil Court will decide the aspect of the admissibility of the secondary evidence while deciding the

suit. The trial Court, while finally deciding the case, will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the Will in question by way of secondary evidence.

6. At this stage, the learned counsel representing the petitioner submits that another application, filed by the petitioner for admission or denial, was also dismissed. However, he has the instructions not to press this revision petition with respect to the aforesaid relief.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 22, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No