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

CR-2286-2023 (O&M)

Date of Decision: 18.04.2023

HarjinderKaur

...Petitioner

Versus

Gursev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Tarunveer Vashist, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 02.03.2023 (Annexure P-3) passed by Ld. Civil Judge (Jr. Division), Patiala, whereby the application moved by respondent/defendant No.1 for leading secondary evidence, was allowed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a suit for declaration to the effect that she is owner in joint possession of suit property left behind by Late S. Chhota Singh to the extent of her share as per natural succession of Late Sh. Chotta Singh, who died intestate without executing any Will; that the alleged Will dated 02.12.1997, allegedly executed by Late Sh. Chotta Singh in favour of defendants No.1 to 3/respondents No.1 to 3 herein is also null and void; that mutation sanctioned in favour of defendants No.1 to 3 on the basis of the said unregistered Will is also null and void; that entries in revenue record are also liable to be corrected on the basis of inheritance by natural succession and sale deed dated 26.12.2011 executed by defendant No.3 in favour of defendant No.4 from the suit property and mutation sanctioned on the basis of said sale deed are also illegal, null and void. Further, prayer has been made for permanent injunction restraining defendants No.1 to 4 from alienating, mortgaging,

leasing, making gift deeds or transferring in any manner the land more than their share i.e. to the extent of 1/6th share out of the total suit property.

2.2. Respondent No.1 filed an application (Annexure P-1) for leading secondary evidence and alleged that after the death of Chotta Singh, he handed over the original Will dated 02.12.1997 executed by Chotta Singh in favour of respondents No.1 to 3 to HalqaPatwari, but now from the statement of DW3 it came on record that the original file of mutation is not traceable. As the original Will dated 02.12.1997 is not traceable, the same is presumed to be lost.

2.3. Petitioner/plaintiff also filed reply (Annexure P-2) to the application but vide impugned order (Annexure P-3), Ld. Trial Court has allowed the defendant’s application.

3. Learned counsel for petitioner/plaintiff would argue that Ld. Trial Court failed to appreciate the fact that as per Section 64 of the Indian Evidence Act, the documents must be proved by way of preliminary evidence and even the instant application does not fall within the exceptions as provided under Section 65 of the Indian Evidence Act since the defendant has not mentioned in his written statement that the document was lost. He would further argue that even non-traceability of alleged document is not yet proved. Further, foremost requirement of law is respondent No.1 has to prove the existence of original document, which he has miserably failed to do.

4. Heard.

5. Para 3 of revision clearly suggests in so many words that respondent/defendant No.1 came to know of the loss of original Will after the revenue record was inspected and it was in those circumstances that he was compelled to file an application for leading secondary evidence.

6. Order dated 02.02.2023 (Annexure P-3) assailed herein, is premised, inter alia, on the following reasoning:

“XXX XXXX XXXX XXXX”

Office Kanungo revenue record room, Mini Secretariate Block A Patiala along with original record of mutation no.142 of village Behal, Tehsil and District Patiala entered and sanctioned on the basis of decree passed by Sub Judge-IIInd Class Patiala dated 1.4.1970 in the name of Ram Singh, Gurdial Singh and Chotta Singh son of Sohan Singh son of Ram Ditta. After that said witness has appeared before this court as DW3 and suffered a statement as under:

Stated that he is submitting that one mutation no.389 was entered in the revenue record on the basis of KhangiWasiat dated 2.12.1997 of Chotta Singh deceased, and certified copy of the said mutation is Ex.DW3/1 and same is issued by his office. He further submitted that whenever jamabandi is to be prepared at the end of every five years, then the original mutation file and other additional document did not annex with it as per the guideline of the Government and now said document could not traceable and original document is impossible to trace the same.

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Now, this court is of the opinion that it will be decided after coming the evidence of the parties and appreciation of the evidence adduced by the parties whether the said WILL dated 2.12.1997 was legally executed by Late Chotta Singh or not, whether said WILL was forged and fabricated document or not, one thing is clear that in the past on the basis of said WILL dated 2.12.1997, mutation has already been sanctioned in the revenue record, whether the revenue officer's have done their duty as per the law or there was a connivance or collusion between revenue officer with the beneficiary of the WILL, it is question of fact as well as law that whether the concerned revenue authorities had given the benefit to the beneficiary of the WILL.

*At this stage this court is of the opinion that without giving any comment over the said alleged WILL dated 2.12.1997, **this court is hereby given the relief to the applicant-defendant to prove his case because one additional issue has already framed regarding the said alleged WILL and onus was upon the defendant no.1 to prove this WILL.** It is general perception that there should be a fair trial between the parties, each and every person ought to be a opportunity to explain or clear his case. It is also question of law as well as fact that at the time of filing the written statement or before filing the reply of the application moved by plaintiff regarding the production of said WILL, whether defendant no.1 was fully aware that original WILL could not be traceable from the revenue department, and he ought to be adduce his evidence as secondary evidence to prove the said WILL. But case of the plaintiff is not such like that, therefore, at this stage this court is hereby given to the relief to the applicant/defendant subject to the stipulation as provided in the law of evidence. So, application of the plaintiff of secondary evidence is hereby allowed subject to document lost and not traceable and will prove the said alleged WILL as per law of*

evidence. Now to come up on 16.3.2023 for producing the secondary evidence as per the law of evidence”

7. Above observations shows that the learned trial Court was satisfied on the fulfillment of conditions under Section 65 of the Act *ibid* for proof of the Will by secondary evidence. I am inclined to agree with the view taken by it. A perusal of above leaves no manner of doubt that there is no material irregularity in law or procedure committed by Ld. Court below while passing the impugned order calling for interference in exercise of extraordinary revisional jurisdiction vested with this Court.

8. There is thus no room for interference in the aforesaid valid reasons recorded by learned trial Court, with which I am in agreement. No grounds for interference are made out.

9. Dismissed.

10. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 18, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No