

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CR No.3034 of 2022 (O&M)
Date of Decision : 17.01.2023**

Deputy alias Deputy Sahib

....Petitioner

VERSUS

Ashok Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Sharma, Advocate for the petitioner.

Mr. Amit Dhawan, Advocate for the caveator/respondent no.1.

ALKA SARIN, J. (Oral)

Challenge in the present revision petition is to the order dated 27.05.2022 passed by the Additional Civil Judge (Sr. Division), Nakodar whereby application filed by the defendant-respondent no.1 for leading secondary evidence has been allowed.

Learned counsel for the plaintiff-petitioner would contend that application filed by the defendant-respondent no.1 could not have been allowed since beneficiaries of the Will have already been examined and cross-examined.

Per contra learned counsel for the defendant-respondent no.1 has pointed out that after filing the present revision petition, since there was no stay operating, secondary evidence stands allowed and now the evidence of the defendant-respondent no.1 has been closed by order. It is further the contention that evidence of the defendant-respondent no.1 was going on when the application for leading secondary evidence was filed in accordance with the law.

I have heard learned counsel for the parties.

In the present case admittedly the evidence of the defendant-respondent no.1 was going on when the application for leading secondary evidence to prove the Will dated 21.04.1993 was filed. The onus to prove the Will was on the defendant-respondent no.1 and since the original was not available the application for leading secondary evidence was filed. In para 3 of the application it has specifically been stated that the Will dated 21.04.1993 had been lost qua which a rapat with the Police had already been lodged. The present application was filed since the loss already stands established. I do not find any illegality or infirmity in the impugned order passed by the Trial Court permitting leading of secondary evidence. It is trite that the Will itself would have to be proved as per Section 65 of the Evidence Act, 1872. The Trial Court while disposing off the application has already observed that the secondary evidence has been allowed subject to the conditions and limitations of Section 65 of the Evidence Act, 1872.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off. Any observation made herein shall not be treated as an expression of opinion on the merits of the case.

17.01.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO