

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

2023:PHHC:146810

CR-5214-2016

Date of decision: 20.11.2023

AMRO @ AMARJIT @ RAMJANAN

..Petitioner

Versus

HARI SHEKH @ HARI SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jindal, Advocate
for the petitioner.

Mr. Rajesh Kumar Kashyap, Advocate
for Mr. K.S. Chahal, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is the daughter of the respondent. The dispute that arises for adjudication is with regard to the inheritance of the property left behind by the petitioner's mother and the respondent's widow. The respondent claims the property on the basis of an unregistered Will dated 15.02.2009. In order to prove the Will, an application to lead the secondary evidence was filed by the respondent, which has been allowed. The correctness of the aforesaid order has been challenged in this revision petition.
2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.
- 3.. 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 **RSA-327-1989, titled as "Madan Lal Vs. Shankar and others", decided on 01.11.2018**, came to a conclusion that there is no provision in the aforesaid laws and rules that mandate for filing an application for permission to lead secondary evidence.

4. 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 misconception, which has now become an epidemic. Even the Supreme Court in **Dhanpat Vs. Sheoram (Deceased) through LRs and others, 2020 SCC online SC 606** made observations in this regard.

5. In **Civil Revision No.2575 of 2020, titled as “Vinod Kumar Vs. Satbir Singh”, 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.”

6. Keeping in view the aforesaid facts, the revision petition is disposed of with the observations that the respondent shall be permitted to produce the evidence, primary or secondary. Once the evidence has been led, the Court while finally deciding the suit, shall evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the Will in accordance with the provisions of Indian Evidence Act, 1872. The Court shall also examine whether the respondent has proved the loss of the Will.

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

November 20th, 2023

(ANIL KSHETARPAL)

Ay

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No