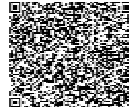


2025:PHHC:153041



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

CR-6373-2024 (O&M)

Reserved on: 25.09.2025

Pronounced on: 06.11.2025

Gurjit Singh

.....Petitioner

Versus

Tejpal Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Anuj Kumar Sharma, Advocate,
for the petitioner.

Mr. Viren Sibal, Advocate,
for respondents No.1 to 3.

Mr. Rajiv Sharma, Advocate,
for respondent No.4.

VIKRAM AGGARWAL, J

The instant petition, preferred under Article 227 of the Constitution of India, assails the order dated 13.09.2024 (Annexure P.1) passed by the Court of Civil Judge (Junior Division) Amritsar, vide which the application filed by respondent Nos. 1 to 3/plaintiffs (hereinafter referred to as the respondent-plaintiffs) to produce secondary evidence in respect of Will dated 17.11.1979 stated to have been executed by S. Budh Singh, was allowed.

2. The facts, as emanating from the revision petition, are that a suit for separate possession by way of partition of properties fully described in the plaint, declaration and permanent injunction was instituted by the respondent-plaintiffs

against the defendants (Harjinder Singh and others) and the present petitioner being defendant No.5 (hereinafter referred to as the `petitioner-defendant).

3. Plaintiff No.1-S.Tejpai Singh; defendant No.1-Harjinder Singh and defendant No.2-Smt. Daswinder Kaur, are the sons and daughter of Amrik Singh. Plaintiff No.2-Amit Bhatia is the son of plaintiff No.1-S. Tejpai Singh and grandson of Amrik Singh. Amrik Singh is the son of Budh Singh. The other defendants are the sons and daughters of Budh Singh as also other parties. The basic claim set up was that certain properties in dispute had been purchased by Amrik Singh, whereas some properties were stated to have devolved upon him on account of Will dated 17.11.1979, having been executed in his favour by S. Budh Singh, the same having been registered on 22.01.1981. It is also claimed that Amrik Singh executed a Will dated 01.10.2012 registered on 03.10.2012 in terms of which plaintiff No.1-S. Tejpai Singh became the sole and absolute owner of the properties referred to in the said Will on the demise of Amrik Singh on 25.01.2013.

4. The suit was opposed by way of written statements (Annexures P.2 and P.3), wherein apart from other averments, execution of Will dated 17.11.1979 by S. Budh Singh was denied and it was stated that the said Will was a forged and fabricated document.

5. Issues were framed on 19.05.2017, whereafter parties led their respective evidence. When the matter was fixed for rebuttal evidence and arguments, an application (Annexure

P.6) was moved by the petitioner-plaintiffs for permission to produce secondary evidence in respect of Will dated 17.11.1979 executed by S. Budh Singh. It was averred in the application that the original of the said Will was in the custody of S. Harjinder Singh (one of the defendants). It was further averred that the certified copy of the Will formed part of the judicial file on the basis of the testimony of PW5-Lalit Kumar son of Kedarnath. The said Kedarnath was stated to be an attesting witness of the said Will. It was averred that Will dated 17.11.1979 was an ancient document and its production by the plaintiffs was ruled out in the face of the original not being in his custody. It was averred that no other witness was to be examined to prove the said Will and under the circumstances, it was prayed that the said Will, certified copy of which was produced on record as PW5/2 and Xerox copy as Mark-G, be taken on record as secondary evidence

6. The application was opposed by reply (Annexure P.7) in which it was averred that the application was not maintainable at that stage and the same ought to have been filed before leading evidence. It was also averred that the plaintiff had nowhere mentioned in the plaint that the original Will was in the custody of Harjinder Singh (defendant No.1). All other averments made in the application, were denied and it was averred that since the mandatory provisions of Sections 65 and 66 of the Evidence Act, had not been complied with, the said application could not have been moved.

7. By way of the impugned order, the said application was allowed by the trial Court, leading to the filing of the present revision petition.

8. Learned counsel for the parties were heard.

9. It was strenuously urged by learned counsel for the petitioner that the learned trial Court had erred in allowing the application. It was submitted that no averments were made in the plaint as regards the original Will being in the custody of defendant No.1-Harjinder Singh and under the circumstances, the application could not have been allowed. Reference was made to the relevant paragraphs of the plaint and those of the written statement. It was further submitted that the issues were framed as far back as in 2017 and even the entire evidence had concluded and only when the matter was fixed for rebuttal evidence and arguments, the application was filed. Learned counsel submitted that this in itself proves that the application was aimed at delaying the proceedings and the trial Court ought not to have allowed the same.

10. Per contra, learned counsel representing respondents No. 1 to 3 submitted that there is no illegality in the impugned order. It was submitted that the suit was at the stage of rebuttal evidence and in terms of the provisions of Order 18 Rule 3 CPC, an application could duly be filed and maintained. It was submitted that the Will had already been produced on record and the only permission which was being sought, was to bring it on record as secondary evidence. Learned counsel strenuously urged that the parties should not be non-suited on

technicalities. It was further submitted that the trial Court had rightly held that the said application deserved to be allowed for the just decision of the case. In support of his contentions, learned counsel relied upon the judgments of the Hon'ble Supreme Court in **Ashok Dulichand Vs. Madhavlal Dube and Another**, (1975)4 SCC 664; **Rakesh Mohindra Vs. Anita Beri and others**, (2016)16 SCC 483 and **Jagmail Singh and Another Vs. Karamjit Singh and others**, (2020)5 SCC 178.

11. Learned counsel representing respondent No.4 also addressed the arguments on similar lines.

12. I have considered the submissions made by learned counsel for the parties.

13. Section 61 of the Indian Evidence Act, 1872 (hereinafter referred to as the "Evidence Act") (Section 56 of the Bharatiya Sakshaya Adhinyam 2023) (for short the "BSA") deals with proving of contents of documents and lays down that the contents of documents may be proved either by primary or by secondary evidence. Primary evidence is the document itself produced for the inspection of the Court and secondary evidence includes certified copies, copies made by mechanical processes, copies made from or compared with the original etc. Section 63 of the Evidence Act (Section 58 BSA) stipulates the type of documents, which can be said to be secondary evidence. Section 64 of the Evidence Act (Section 59 BSA) states that documents shall be proved by way of primary evidence, except in cases mentioned in Section 65 of the Evidence Act (Section 60 BSA). Section 65 of the Evidence Act is reproduced herein below:-

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —

- (a) when the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has

examined them, and who is skilled in the examination of such documents.”

14. In the case of **Vijay vs. Union of India and others**, (2023) 17 SCC 455, the Supreme Court of India, while referring to the judgment of the Constitution Bench in the case of **Cement Corpn. of India vs. Purya**, (2004) 8 SCC 270, enunciated the following nine principles relevant for examining the admissibility of secondary evidence:-

- “1. Law requires the best evidence to be given first, that is, primary evidence.
2. Section 63 of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence.
3. If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given.
4. A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party.
5. When the non-availability of a document is sufficiently and properly explained, then the secondary evidence can be allowed.
6. Secondary evidence could be given when the party cannot produce the original document for any reason not arising from his default or neglect.
7. When the copies are produced in the absence of the original document, they become good secondary evidence. Still, there must be foundational evidence that the alleged copy is a true copy of the original.
8. Before producing secondary evidence of the contents of a document, the non-production of the original must

be accounted for in a manner that can bring it within one or other of the cases provided for in the section.

9. Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents. It has to be proved in accordance with the law. (*emphasis applied*).

15. In **Dhanpat vs. Sheo Ram (deceased) through LRs and others**, 2020(2) RCR (Civil) 437, the Supreme Court of India held that an application for leading secondary evidence was not required to be filed in terms of Section 65(c) of the Evidence Act and if the foundation for leading secondary evidence was there either in the plaint or in evidence then, secondary evidence could not be ousted because an application to lead secondary evidence had not been filed. It was held that once a party is able to produce evidence that the original Will had been lost and a certified copy had been produced, sufficient ground would be made out for leading secondary evidence.

16. In **Bharat Bhushan Ahuja vs. Kiran Sachdeva and others**, 2023(1) RCR (Civil) 869, a coordinate Bench of this Court was dealing with a similar issue, where the defendant had propounded a Will in the written statement but no details including the dates were mentioned. In response to an application for producing the original Will, it was stated that the original Will was in a locker, which he had not been permitted to operate after the death of his father. The application was disposed of on that statement. Thereafter, an application was filed by the defendant for leading additional evidence by way of secondary evidence. The trial Court disposed of the application.

The applicant was directed to verify the facts with regard to the presence of the original Will in the bank locker and in case, it was not found, a fresh application for secondary evidence could be moved. Thereafter, another application for secondary evidence was moved, which was dismissed. During the pendency of the revision petition, the locker was permitted to be operated, but no Will was found. The coordinate Bench, while dealing with the statutory provisions viz. Section 65(c) of the Evidence Act, held that the secondary evidence was admissible when it is shown that the primary evidence was in existence and that before secondary evidence can be led and proved, the original document is to be shown to exist. Since no Will had been found in the locker, it was held that it would be incumbent upon the applicant to show that the original document qua which the secondary evidence was being sought to be produced was in existence, as also to prove that the same had been lost and to show how the photocopy was procured.

17. In the case of **Gurjaj Singh and another vs. M/s Narinder Mohan Aggarwal and others**, 2018(4) PLR 548, a coordinate Bench was dealing with a revision petition instituted against an order, vide which an application under Section 65 of the Evidence Act for leading secondary evidence in respect of a photocopy of a receipt had been allowed.

18. After examining the law on the subject, the coordinate Bench held that the document which had been claimed to have been stolen would be proved by the plaintiff and the relevant witnesses could be examined. In case, the execution

of such a document was not proved in accordance with law, the Court would be at liberty to eschew such evidence. It was held at that stage of litigation, curtailing the right of the plaintiff would not be in consonance with the settled principles of law:-

“5. In *Bipin Shantilal Panchal v. State of Gujarat, 2001(1) RCR (Criminal) 859*, the Hon'ble Apex Court laid down that the procedure has been set for receiving the documents when the same is objected to during trial. The Hon'ble Apex Court has castigated the practice of holding up trial on objections taken at the time of tendering documents in evidence. At that stage, asking the Court to pass an appropriate order on objections has been categorized as an 'archaic practice'.

6. The leading of evidence at such a stage would not crystallize any substantial right in favour of the defendants, rather the evidence led by the plaintiff would be tested at the threshold of admissibility, validity and genuineness of the document in terms of execution and its nature at a later stage. Later stage would be an appropriate stage for lawful consideration of such a criteria i.e. of validity, admissibility and genuineness of the document. Even though there is no provision for de-exhibiting the document at a later stage, still the Court can eschew the evidence in case the document does not qualify the aforesaid ingredients. The attempt of the party for production and exhibition of the document cannot be thrown at the threshold of technicality. The view expressed in *Dr. S.P. Arora v. Satbir Singh, 2010(5) RCR (Civil) 350* and *Simar Pal Singh v. Hakam Singh, 2009(14) RCR (Civil) 273* can be relied in the aforesaid context.

7. The arguments raised by learned counsel for the petitioner would be adequately answered by the trial Court at the time of consideration of the issue on merits. In *U. Sree v. U. Srinivas, 2013 (1) RCR (Civil) 883*, the Hon'ble Apex Court has commented that to permit secondary evidence which has been destroyed by the person in whose possession it was and whose it created an enforceable legal right or an obligation, is normally not

to be allowed as secondary evidence. The secondary evidence of such a nature may be tempered with or changed and it would be against public policy to take chance of running the risk of fraud being committed.

8. Such situation is not involved in the present case, rather the document, which is claimed to be the subject matter of theft, will be proved by the plaintiff in accordance with law. The relevant witnesses can be examined at a later stage. In case, execution of such document is not proved in accordance with law, the Court would be at liberty to eschew such evidence. At this stage of litigation curtailing the right of the plaintiff would not be in consonance with the settled principle of law.”

19. Reverting to the facts of the present case, Paras No. 9 and 18-A of the plaint deserve to be reproduced:-

“9. That 1200 sq. yards of land approximately denoted by Khasra number IE-75, 1914 old, Khana Shumari No. T18 MCA/247, of inner circular road in between gate Hakiman and gate Khazana, Amritsar belong to Amrik Singh having since been bequeathed in favour of S. Budh Singh, his father vide Will dated 17.11.1979 registered on 22.01.1981 and Amrik Singh was sole and absolute owner of such property. That such property further bequeathed by S. Amrik Singh in terms of a registered Will dated 01.10.2012 registered on 03.10.2012 as document No. 1119 with Sub Registrar, Amritsar-I and S. Tejpal Singh plaintiff No.1 became sole and absolute owner of such property on the demise of S. Amrik Singh on 25.01.2013.

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18.A. That S. Amrik Singh was owner of a Tabela No. 64/9 on inner circular road between Gate Khazana and Gate Hakiman, Amritsar measuring about 50 Sq.Yds., bequeathed in his favour by his father S. Budh Singh vide Will dated 07.11.1979, duly registered under Section 40 of Registration Act. On demise of parties' parents, the said property devolved in equal shares upon plaintiff No.1 and defendant No.1 and defendant No.2. Plaintiff No. 1 is in possession of the same.”

A perusal of the aforesaid proceedings shows that it was nowhere pleaded in the plaint that Will dated 17.11.1979

was in the custody of Harjinder Singh or that it was not in the custody of the plaintiffs.

20. The execution of the said Will was denied in the written statement(s) and it was stated that the same was a forged and fabricated document. It was for the first time in the application for permission to prove the said Will by way of secondary evidence that a stand was taken that the Will was not in the custody of the plaintiffs and that was in the custody of Harjinder Singh. It has also come on record that a certified copy of the said Will was duly produced in evidence as Exhibit PW5/2 and photocopy as Mark-G. The admissibility or otherwise of Exhibit PW5/2 will have to be decided by the trial Court in terms of the provisions of the Evidence Act.

21. If one examines the statutory provisions as referred to in the preceding paragraphs and the law on the subject, it emerges that in fact, there was no need for filing an application to prove Will dated 17.11.1979 by way of secondary evidence and it was for the trial Court to examine as to whether the said Will had been proved or not. In case such an application had to be moved, it should have been with a foundation for the same in the pleadings, which as noticed above, was not there. Still further, such an application should have been moved at the relevant stage and not at the fag end of the trial.

22. Be that as it may, as noticed above, the Will has already been produced in evidence and RW5-Lalit Kumar, son of Kedarnath, one of the attesting witnesses of the Will, stands examined. The Court would examine as to whether the plaintiffs

had been able to prove the execution of the Will or not either by way of primary or secondary evidence. Under the circumstances, it is reiterated that there was no need for an application to be filed and in any case, the same was wrongly allowed by the trial Court.

23. That being so, the impugned order is found to be unsustainable and is, accordingly, set aside. Consequently, the application moved by the respondent-plaintiffs for proving Will dated 17.11.1979 by way of secondary evidence, stands dismissed. However, the trial Court would be free to examine the matter on its own merits in terms of the provisions of law.

24. The petition stands disposed of in the above terms.

25. Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDG

06.11.2025
ds

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No