



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7158 of 2024 (O&M)

Date of Order:15.01.2025

Kirpal Singh

.Petitioner

Versus

Avtar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amandeep Singh, Advocate
for the petitioner.

ANIL KSHETARPAL, JUDGE (Oral)

1. This revision petition has been filed by defendant no.1 to assail the correctness of the trial court's interlocutory order permitting the plaintiffs to prove the Will dated 06.10.2017, allegedly executed by Smt. Manjit Kaur by way of secondary evidence.

2. This court after examining the provisions of the Indian Evidence Act, 1872, Code of Civil Procedure, 1908 and the High Court Rules and Orders, has concluded that there is no provision that mandates filing of an application for permission to lead secondary evidence. In Ashok Kumar vs. Sudesh Rani and another, (Civil Revision No.8166 of 2018, decided on 21.07.2023), the Court held as under:-

“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 for filing an application for permission to lead secondary evidence. 5. 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 attained proportions of 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. 6. 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.”

3. Moreover, the plaintiffs have only been permitted to lead secondary evidence. They are required to prove not only the fact that they lost the original Will but also prove its proper execution, existence, validity and genuineness.

4. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

5. Dismissed.



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

(ANIL KSHETARPAL)
JUDGE

January 15, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No