

CNR No.PBFGFB00000202017

CIS No. CS/13/2017

Balbir Singh VS State of Punjab and others

Present: Sh. H.S.Rai, Advocate for the plaintiff
Sh. Rajinder Kumar, Government Pleader for defendants
no.1 and 3
Sh. Neeraj Sharma, Advocate for defendant no.2
Sh.C.S. Sidhu Advocate for defendant No.4 and 5

***Application for allowing the plaintiffs to prove
registered Will dated 11.10.1996 executed by
Jangir Singh in favour of Hardev Kaur by way
of secondary evidence.***

ORDER:-

1. This order of mine shall dispose of an application filed by the plaintiff/applicant for permission to lead secondary evidence regarding the Will dated 11.10.1996 executed by Jangir Singh in favour of Hardev Kaur by producing and proving the certified copy of the same.

2. It has been averred that original Will has been misplaced and could not be traced in spite of best efforts. It has been further averred that the above said Will is a registered document and its true copy is lying in the office of Sub-Registrar and proving the certified copy of the same by way of secondary evidence is very much

necessary for proper adjudication of the present case. It has been accordingly, prayed that the present application be allowed, in the interest of justice.

3. Per contra, ld. Counsel for the respondents/defendants no. 4 and 5 appeared and filed written reply to the said application, wherein, it has been averred that Jangir Singh never executed Will dated 11.10.1996 in favour of Hardev Kaur. The alleged Will dated 11.10.1996, if any, the same is false, forged, fabricated and self created document and certified of the same cannot be tendered in evidence by way of secondary evidence. No permission to lead secondary evidence can be allowed. Denying other averments made in the application, a prayer for dismissal of the application have been made.

4. I have heard the rival submissions made by the ld. Counsel for both the parties and perused the judicial file carefully.

5. From perusal of the judicial file, it is forthcoming that the plaintiffs have filed the suit for declaration to the effect that the plaintiffs were joint owners in possession to the extent of $\frac{1}{2}$ share out of acquired house in dispute and they are entitled to $\frac{1}{2}$ share out of

compensation of house in dispute. Plaintiffs have also sought the relief of Permanent Injunction. The Ld. Counsel for the plaintiffs has contended that the original copy of will dated 11.10.1996 could not be traced despite best efforts and therefore, permission be granted to adduce secondary evidence to prove the same.

6. As per Section 65 of the Indian Evidence Act, secondary evidence can be given when the original document has been destroyed or lost. In case the document has been lost, the applicant has to prove two things i.e., existence of the original document and its subsequent loss or untraceability. In the present case, the plaintiff has placed on record certified copy of Will dated 11.10.1996 and has therefore, prima facie proved the existence of the impugned document. As per the contention of plaintiffs that the original Will could not be traced, the mere averment of the plaintiffs is sufficient at this stage. Reliance can be placed on the judgment of the Hon'ble Punjab & Haryana High Court in case titled as "***Simarpal Singh Vs. Hakam Singh 2009(2) PLR 562***" wherein it has been held that "*at the time when a petition is filed for producing secondary evidence, nothing more needs to be proved,*

than stating one of the grounds as required under Section 65 of Indian Evidence Act to justify the reception of secondary evidence. Whether the grounds really exist or not could only be decided in the cross-examination if a basis is laid down in chief examination.”

7. Therefore, in the light of the law as discussed above and in view of the observations made above, this Court is of the considered view that the requirements of Section 65 of the Indian evidence Act are fulfilled in the present case and there is considerable merit in the application filed by the applicant/plaintiffs. The application for leading secondary evidence is accordingly allowed and the applicant/plaintiffs is hereby allowed to lead secondary evidence in order to prove the original Will in question dated 11.10.1996 subject to proof of loss/untraceability of the same.

Pronounced on:-21.03.2024

Ankita Dhawan, PCS
Civil Judge (Jr. Division)
UID No.PB0589,Khamanon

Shubham Steno-III

Note:- Directly typed on computer

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Plaintiffs have filed certified copy of Will dated 11.10.1996.

Arguments heard. Vide my separate detailed order of even date, the application for permission to lead secondary evidence regarding the Will dated 11.10.1996 is **allowed**, as detailed therein.

Now case stands adjourned for 25.04.2024 for plaintiff evidence. Dasti summons to witnesses Jagdish Rai and concerned clerk of Sub Registrar office be issued for said date.

Date of order:-21.03.2024

Ankita Dhawan, PCS
Civil Judge (Jr. Division)
UID No.PB0589,Khamanon

Shubham Steno-III

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