



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

CR-256-2018

Reserved on: 20.08.2025

Pronounced on : 17.09.2025

Ginna Ram

...Petitioner

V/s

Jai Singh (since deceased) through LRs and others ... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Tarun Kumar Dhingra, Advocate, for the petitioner.

Mr. Vimal Kumar Gupta, Advocate,
for respondents No.1(i) to 1(v) and
respondents No.2 and 5.

None for respondents No.3 and 4 despite service.
(as per order dated 10.12.2019)

VIKRAM AGGARWAL, J

The instant revision petition, preferred under Article 227 of the Constitution of India, assails order dated 14.12.2017 (Annexure P-1), passed by the Court of Addl. Civil Judge (Sr. Divn.), Pehowa, vide which the application (Annexure P-4) moved by the respondent-defendants No.1 and 2 for permission to produce secondary evidence was allowed.

2. The facts, as emanating from the revision petition, are that the petitioner-plaintiff (Ginna Ram) instituted a suit for declaration and joint possession with consequential relief of permanent injunction.

3. One Sonu Ram had five sons namely Ginna Ram (plaintiff), Jai Singh (defendant No.1), Dhanpat (defendant No.2), Ram Partap (defendant No.3) and Mai Chand (defendant No.4). Sonu Ram was stated to be having two wives, namely, Shingari and Jyoti. The plaintiff and defendants No.3

and 4 were born from the wedlock of Sonu Ram and Smt. Shingari, whereas defendants No.1 and 2 were born from the wedlock of Sonu Ram and Smt. Jyoti. Defendant No.5 (Chameli Devi) was cousin sister of the plaintiff (Ginna Ram) and defendants No.1 to 4.

4. Sonu Ram was the owner in possession of two parcels of land, one measuring 46 *kanals* 16 *marlas* and the second measuring 5 *marlas* (fully described in the plaint), situated at Village Bhole Saidan, Tehsil Pehowa, District Kurukshetra (hereinafter referred to as the "suit land").

5. It was the claim of the petitioner-plaintiff that Sonu Ram had expired on 30.01.1983 leaving behind plaintiff and defendants No.1 to 4 as his only Class I legal heirs. After the death of Sonu Ram, the suit land was inherited by plaintiff and defendants No.1 to 4 in equal shares. Though, they continued to be in joint and cultivating possession of the same, revenue entries were not changed. About 30 years after the death of Sonu Ram, Mutation No.2269 dated 12.08.2013 was entered in favour of defendants No.1 and 2 as regards the suit land on the basis of a Will dated 08.06.1982 propounded by defendants No.1 and 2 and stated to have been executed by Sonu Ram.

6. The petitioner-plaintiff called upon the said defendants to accede to the position that plaintiff and defendants No.1 to 4 were joint owners in possession but they did not accede, leading to the filing of the suit (Annexure P-2).

7. The suit was opposed by way of written statement (Annexure P-3) filed by defendants No.1 and 2 wherein, a stand was taken that Sonu Ram had executed Will dated 08.06.1982, which was in the knowledge of the plaintiff and other defendants also and, accordingly, mutation had been sanctioned on the basis of the said Will. A stand was taken that mutation

had been sanctioned after contest in the Court of Assistant Collector (Ist Grade), Pehowa.

8. During the course of trial, an application (Annexure P-4) was moved by respondents-defendants No.1 and 2 to prove the Will dated 08.06.1982 by way of secondary evidence, stating that the original Will was with the petitioner-plaintiff and he had refused to produce the same in Court. It was averred that prior to the filing of the suit, a dispute had arisen as regards a plot owned by Sonu Ram, upon which the petitioner-plaintiff had started raising construction. When defendants No.1 and 2 objected to it, an altercation ensued. The Sarpanch of the village intervened. When the petitioner-plaintiff claimed ownership over the land, the applicants stated that they had a Will executed by Sonu Ram. When the petitioner-plaintiff insisted that the will be shown to him, the same was brought and upon the request of the petitioner-plaintiff, the original Will was handed over to the Sarpanch, which was not returned.

9. The application was opposed by way of reply (Annexure P-5) in which, it was stated that the Will was forged and fabricated. The averments made in the application were denied. It was averred that earlier an application had been filed by the petitioner-plaintiff for directing the defendants to produce the original Will. In reply to the said application, no stand was taken that the Will had been handed over to the Sarpanch or to the petitioner-plaintiff.

10. By way of the impugned order, the application for secondary evidence was allowed, leading to filing of the instant revision petition.

11. Learned counsel for the parties were heard.

12. It was submitted by learned counsel representing the petitioner that the trial Court had erred in allowing the application. It was submitted

that nowhere in the plaint or subsequently in the reply to the application filed by the petitioner-plaintiff for production of the Will, had it been stated that the Will was with the petitioner-plaintiff and that under the circumstances, the ground raised in the application was clearly an after thought. It was submitted that no permission could have been granted for proving the Will by way of secondary evidence. In support of his contentions, learned counsel placed reliance upon the judgments in *M/s Dehar Vanshui Mini Rice Mills vs. Rajender Kumar, 2015(5) RCR (Civil) 677* and *Mahender Singh vs. Kaptal Singh and another, 2015(3) RCR (Civil) 474*.

13. *Per contra*, learned counsel representing the respondents, submitted that there is no illegality in the impugned order. It was submitted that when an application was filed by the petitioner-plaintiff calling upon defendants No.1 and 2 to produce the Will, it was duly stated that they were not in possession of the Will and, therefore, they were fully justified in moving the application for proving the Will by way of secondary evidence. It was submitted that the trial Court had considered the matter from the right perspective and had rightly allowed the application.

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

15. 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.”

16. 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. (23" It has to be proved in accordance with the law” (emphasis applied)

17. 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.

18. 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.

19. 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.

20. 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 ie. 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. Sathir 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.”

21. Reverting to the facts of the present case, the defendants took a stand in the written statement that Sonu Ram had executed the Will. However, nothing was stated in the written statement that the original Will was with the plaintiff. The plaintiff moved an application calling upon the defendants to produce the Will. Here also, in the reply to the application, the defendants did not aver that the Will was with the plaintiff and only averred that they were not in possession of the Will.

22. If one examines the statutory provisions and the law on the subject, it emerges that in fact, an application for proving a document by way of secondary evidence is not required to be moved. Evidence can be primary evidence or secondary evidence. If somebody produces a document, which is not primary evidence, it is for the Court to see whether

the secondary evidence is admissible. The onus would be on such a party to prove the existence of a document and its loss or its possession with some other party and further as to how, it was in possession of a photocopy of the said document. It would be for the Court then to decide whether the evidence was admissible. Merely to decline or allow permission to lead secondary evidence would not be a decision in accordance with law.

23. In the present case also, though the trial Court has decided the application for secondary evidence in quite a perfunctory manner without noticing the statutory provisions and the intent thereof, however, the ultimate decision of the application is not erroneous. In fact, there was no need to decide the application and the Court could have decided about the admissibility of the evidence at the relevant stage.

24. Accordingly, the impugned order is not liable to be set aside. However, the trial Court would proceed in accordance with statutory provisions and the law on the subject, as has been noticed in the preceding paragraphs.

25. The revision petition is disposed of accordingly.

Pending application, if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 17.09.2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No