

(2010) 11 P&H CK 0541

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4531 of 2010

Shishu Pal Sablok

APPELLANT

Vs

Bal Krishan Sablok and Others

RESPONDENT

Date of Decision: Nov. 12, 2010

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Judgement

Hemant Gupta, J.

The Plaintiff is in revision aggrieved against an order passed by the learned trial Court on 12.04.2010, whereby an application filed by the Plaintiff for permission to lead secondary evidence in respect of registered Will dated 01.06.1993 was dismissed.

2. The Plaintiff, who is not an ordinary resident of India has filed the present suit for declaration claiming estate of his mother late Smt. Bimla wife of late Shri Chunni Lal Sablok. She died on 17.09.1993. It is the case of the Petitioner that during her life-time, Smt. Bimla has executed a Will, which was registered on 10.06.1993. The Petitioner has sought to lead secondary evidence in respect of said Will alleging therein that he has not been able to locate the Will from the belongings of his mother, when he visited India and tried to locate the same. The learned trial Court has found that the Plaintiff has failed to prove loss of the document and that the Plaintiff is required to prove the loss of the document before he can be permitted to lead secondary evidence.

3. The Will is a document, which is not necessarily required to be in possession of the beneficiary such as the Plaintiff. Therefore, the assertion of the Plaintiff that he has not been able to locate the document from the belongings of the deceased cannot be said to be untenable or unbelievable. The Petitioner has sought to prove the Will by leading secondary evidence. Since the Petitioner is relying upon a Will, which is said to be registered, the Plaintiff is required to prove execution of the said Will in such a manner as is required by law, but without production of the original

Will, as the same is said to be not available.

4. In view of the above, the order passed by the learned trial Court on 12.04.2010 is set aside. The Plaintiff is permitted to lead secondary evidence in respect of Will dated 01.06.1993 registered on 10.06.1993 in accordance with law.