

Will - Comparison of signatures - Expert from a government laboratory reported that they couldn't conduct an examination of the signatures because they were provided only with a photocopy of the original document - Original will hasn't been submitted for review—only a photocopy exists on the record. Therefore, comparing the signatures on the photocopy of the will with those on the register of the Deed Writer isn't a valid option. The objective is to validate the will, and the expert has clearly stated that signatures on photocopies can't be compared.

Given these circumstances, no directions for the production of the Deed Writer's register can be passed for the purpose of comparing signatures on the photocopy of the will.

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(2023-1)209 PLR 068, Santokh V. Jasbir Kaur

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Alka Sarin.

SANTOKH SINGH - Petitioner,

Versus

JASBIR KAUR and others - Respondents.

CR No.4492 of 2019

Will - Signatures comparison - Government Laboratory - Report of the expert states that the examination could not be conducted because the original document had not been sent to the Laboratory and examination cannot be completed with a photocopy of the document - It is an admitted fact that even today the original Will has not been produced on the record and only a photocopy of the Will exists on the record - That being so, the question of comparison of signatures on the said photocopy of the Will with that of the register of the Deed Writer would not arise - It is the Will which is to be proved and the expert has already opined that the signatures on the photocopies of the documents cannot be compared - That being so, no directions for production of the register of the Deed Writer for comparison of signatures on the photocopy of the Will can be passed.
[Para 7]

Mr. Sarju Puri, for the petitioner. *Mr. Deepak Verma*, for respondent nos.1 and 2.

Alka Sarin, J. (Oral) - (19th September, 2022) - The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 27.05.2019 (Annexure P-1) passed by the Trial Court vide which the application filed by the

petitioner (defendant no.6) along with co-defendant nos.1, 3 and 4 for permission to summon the original register of Hari Ram, Deed Writer, in respect of the Will dated 18.02.2002 for the purpose of comparison by Government Laboratory has been dismissed.

2. The plaintiff-respondents herein filed a suit for declaration to the effect that the plaintiffs and defendant no.8 are co-owners in joint possession in equal share of 5 kanals 17 marlas of land and defendant nos.1 to 4 are the co-owners of 5 kanals 17 marlas of land each out of land measuring 29 kanals 17 marlas comprised in khewat no.30, khatauni no.32, khasra no.320 (3-10), 321 (4-12), 688/448 (0-13), khewat no.31, khatauni nos.33 to 35, khasra no.285 (0-12), 324 (7-7), 685/461 (0-11), 674/319 (1- 13), khewat no.33, khatauni no.37, khasra no.684/461 (1-10), khewat no.34, khatauni no.38, khasra no.307 (8-0), 308 (8-0), khewat no.35, khatauni nos.39 and 40, khasra no.633/57 (2-1), 91 (5-18) as entered in jamabandi of the year 1998-99 situated in the area of village Nariala, Teshil Garhshankar, District Hoshiarpur being the legal heirs of Swaran Singh son of Inder Singh, the predecessor in interest of the parties, who died intestate on 08.12.2002 and the entries in the revenue record on the basis of mutation no.1168 regarding the inheritance of Swaran Singh in favour of defendant nos.5 to 7 on the basis of false, forged and fabricated Will dated 18.02.2002 alleged to have been executed by Swaran Singh in favour of defendant nos.5 to 7 are the result of fraud and misrepresentation and the same is ineffective, inoperative qua the rights of the plaintiffs in the suit land and the entries in the revenue record on the basis of the alleged Will dated 18.02.2002 and the mutation no.1168 are liable to be set aside and corrected so as to show the plaintiffs and defendant no.8 as co-owners in equal shares of 6 kanals 17 marlas of land and defendant nos.1 to 4 to the extent of 5 kanals 17 marlas each in the suit land by deleting the names of defendant nos.5 to 7 from the revenue record with a consequential relief for permanent injunction restraining the defendant nos.5 to 7 from alienating the suit land and dispossessing the plaintiff and defendant no.8 from the same.

3. Perusal of the heading of the plaint reveals that Will dated 18.02.2002 was specifically challenged as being forged and fabricated. Both the parties led their evidence. Thereafter, an application dated 29.08.2016 was filed by the defendant-petitioner for permission to prove the Will dated 18.02.2002 by way of secondary evidence, which was allowed. The defendant-petitioner, after the rebuttal evidence had been concluded by the plaintiff-respondents, filed an application for leading additional evidence on 27.04.2018 in order to submit a counter report from an expert. It is pertinent to note that the plaintiff-respondents in rebuttal led the evidence of a Handwriting Expert to prove that the Will was forged and fabricated. The said application was allowed vide order dated 30.05.2018 and the report of the expert was to be submitted on or before 11.07.2018. The said order was not challenged by the plaintiff-respondents. Thereafter, an application dated 20.04.2019 was filed for permission to summon the original register of Hari Ram, Deed Writer of the year 2002 from where the signatures of Swaran Singh, the executor of the Will, could be compared. The said application was contested and the same was dismissed vide the impugned order.

4. Learned counsel for the defendant-petitioner would contend that in order to compare the signatures of Swaran Singh, summoning of the original register of the Deed Writer would be necessary since the original signatures of the testator of the Will are present in the register

of the Deed Writer.

5. *Per contra*, learned counsel for the plaintiff-respondents has supported the order passed by the Court below dismissing the application. It is further the contention that the defendant-petitioner is trying to delay the matter on one pretext or the other.

6. I have heard learned counsel for the parties.

7. In the present case the propounder of the Will dated 18.02.2002 i.e. defendant-petitioner herein was to prove the Will in the affirmative. Be that as it may, an application filed by them for leading secondary evidence was allowed and thereafter an application for leading additional evidence was also allowed, which was not challenged by the plaintiff-respondents. The plaintiff-respondents sent photocopies of the documents for comparison to a Government Laboratory and it has been noticed in the order dated 20.04.2019 that the report of the expert states that the examination could not be conducted because the original document had not been sent to the Laboratory and examination cannot be completed with a photocopy of the document. It is an admitted fact that even today the original Will has not been produced on the record and only a photocopy of the Will exists on the record. That being so, the question of comparison of signatures on the said photocopy of the Will with that of the register of the Deed Writer would not arise. Learned counsel for the defendant-petitioner is not in a position to state as to which are the original documents with which the signatures of the testator would be compared. The fact remains that it is the Will which is to be proved and the expert has already opined that the signatures on the photocopies of the documents cannot be compared. That being so, no directions for production of the register of the Deed Writer for comparison of signatures on the photocopy of the Will can be passed as the same would be an exercise in futility, resulting in further delay.

8. The defendant-petitioner has been given ample opportunities by the Court below to prove the Will by way of leading secondary evidence as well as additional evidence.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Court below. The present revision petition, which is devoid of any merits, is dismissed. Pending applications, if any, also stand disposed off.

R.M.S.
dismissed.

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Petition