

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.376 of 2012-F.

Date of decision: 28.02.2013.

Gurmeet Singh, son of Shri Munshi Ram, Caste Jat, resident of Village Salangri, Tehsil and District Una, H.P.

.....Petitioner.

Versus

1. Smt.Kailashwati, w/o Sh. Jeet Singh, Caste Jat, resident of Village Salangri, Tehsil and District Una, H.P.
2. Jeet Singh, son of Shri Munshi Ram, Caste Jat, resident of Village Salangri, Tehsil and District Una, H.P.

....Respondents.

Petition under Article 227 of the Constitution of India.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?¹No

For the Petitioner : Mr.Pawan Gautam, Advocate.

For the Respondents : Mr.T.S.Chauhan, Advocate, for respondent No.1.

Kuldip Singh, Judge (Oral).

This petition is directed against the order dated 14.06.2012 passed by learned Civil Judge (Senior Division), Una, in Civil Misc. Application No.141-VI-12 in Civil Suit No.18/2009. It has been submitted by learned counsel for the petitioner that respondent No.1 has filed a suit for declaration against petitioner and respondent No.2. The respondent No.1 is the wife of respondent No.2. The petitioner and respondent No.2 are real brothers and Smt. Partapi Devi had executed a Will dated 11.11.2000 in favour of petitioner and respondent No.2, on the basis of said Will mutation dated 29.06.2004 has been attested in favour of

Whether the reporters of the local papers may be allowed to see the Judgment?Yes

petitioner and respondent No.2 with respect to property left by their mother Smt. Partapi Devi.

2. The respondent No.1 is claiming the property of Smt. Partapi Devi on the basis of Will dated 08.02.2003. It has been submitted that Smt. Partapi Devi has not executed any Will in favour of respondent No.1. The Will dated 11.11.2000 was handed over to respondent No.2 at the time of attestation of mutation and after the attestation of mutation, the Will dated 11.11.2000 was not returned by respondent No.2 to petitioner and the said Will was kept by respondent No.2 with him. The petitioner contested the suit filed by respondent No.1. The respondent No.2 has connived with respondent No.1 and respondent No.1 has filed suit at the instance of respondent No.2 to grab the property left by Smt. Partapi Devi. It has been submitted that the Court below has erred in declining the application of petitioner for secondary evidence moved by him under Section 65 of the Indian Evidence Act.

3. Heard the learned counsel for the parties. The learned counsel for the petitioner has reiterated the stand taken by him in the petition as well as application moved by petitioner under Section 65 of the Indian Evidence Act. The learned counsel for the respondent No.1 has submitted that no notice was given by the petitioner before filing the application for secondary evidence. He has submitted that the Court below has rightly rejected the application. It has not been denied by learned counsel for the respondent No.1 that mutation dated 29.06.2004 has been attested in favour of petitioner and respondent No.2 on the basis of Will dated 11.11.2000, but he has denied the execution of any Will dated 11.11.2000 by Smt. Partapi Devi. The respondent No.2 has been served and none appeared on his behalf.

4. The Court below has rejected the application primarily on the ground of delay. The suit was filed in the year 2009. The application for secondary evidence was filed in March, 2012. The petitioner could file the application for secondary evidence only when the respondent No.1 filed the suit and both the respondents denied the execution and existence of any Will dated 11.11.2000. The title of the parties is involved in the suit property. The Court below has not properly appreciated the material on record while rejecting the application.

5. In the facts and circumstances of the case, the petition is allowed and the impugned order is set aside. The application of the petitioner for proving the Will dated 11.11.2000 by secondary evidence is allowed. The parties through their counsel are directed to appear before the Court below on 21.03.2013, who shall decide the suit in accordance with law. The pending application is also disposed of.

February 28, 2013.
(Krt)

(Kuldip Singh),
Judge.