Amar Singh
v.
The State

Dua, J.

Magistrate had no jurisdiction to hold the trial on the basis of the report under section 71 of the Punjab Excise Act. The impugned order is thus set aside and the case is sent back to the lower appellate Court to decide it on the merits in accordance with law and in the light of the observations made above.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

ARYA PRITINIDHI SABHA, PUNJAB,—*Appellant.*

versus

DEV RAJ AND ANOTHER,—*Respondents.*

Regular Second Appeal No, 183 of 1959,

1962

June, 1st

Punjab Courts Act (VI of 1918)—Section 24—Plaint presented to the District Court—Whether valid—Date of institution of suit for purposes of limitation—Whether the date on which plaint presented to the District Court or the date on which it was received by the trial Court—Will—Revocation of—Whether can be prusumed from the fact that it is not forthcoming—Evidence Act (I of 1872)—Sections 63 and 65—Original will not forthcoming—Secondary evidence—Whether can be given—Registration Act (XVI of 1908)—Section 57(5)—Certified copy of a registered will—Whether proves the execution of the original will.

Held, that according to section 24 of the Punjab Courts Act, 1918, the Court of the District Judge is the principal Court of Civil jurisdiction in the district and is competent to try all suits of any value. If a plaint is presented to that Court, the suit must be deemed to have been filed in the Court of proper jurisdiction for purposes of limitation. The rule in section 15 of the Code of Civil Procedure that every suit should be instituted in the Court of the lowest grade competent to try it is merely intended for the protection of the Courts of the higher grade, but it does not otherwise affect the jurisdiction of Courts and the filing of

the suit in the higher Court will not mean that the suit is not filed in the Court of proper jurisdiction provided that Court is competent to try it. In case the District Judge makes over the suit filed in his Court to any subordinate Court, the date of institution of the suit for purposes of limitation will be the date on which the plaint was presented in his Court and not the date on which the subordinate Court received it for trial.

Held, that the onus to prove that the will was revoked by the testator lies on the person alleging revocation. No presumption of revocation of the will can be raised on the ground that the original will is not forthcoming. Before a presumption of revocation of a will can be raised it must be proved that on the death of the testator a search for the will was made and it was not formed. The presumption of English law that when a will is traced to the possession of the deceased and is not forthcoming at his death is that he has destroyed it, must be applied in India with considerable caution.

Held, that if the original will is not available, its secondary evidence can be led as required by section 63 read with section 65 of the Indian Evidence Act. According to clause (f) of section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition and contents of a document 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, and in such a case according to section 65, it is only the certified copy of the document which is admissible. According to section 57 of the Indian Registration Act, certified copies of documents registered have to be supplied by the Registrar to all persons applying for the same and according to sub-section (5) of section 57, such copies given under this section shall be admissible for the purpose to prove the contents of the original documents. Therefore, if all these provisions of the Indian Evidence Act and the Indian Registration Act are read together, there can be no manner of doubt that the certified copy of the will produced in this case would be sufficient proof of the will. The execution of the original will is proved by the endorsement of the Registrar.

Regular Second Appeal from the decree of the Court of Shri Parshotam Sarup, District Judge, Amritsar, dated the

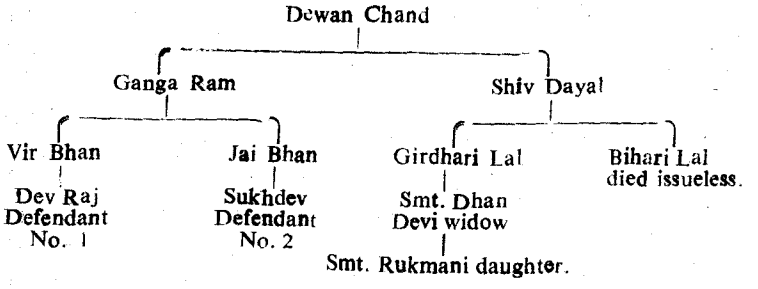
30th day of October, 1958, affirming that of Shri Ganda Singh Bedi, Senior Sub-Judge, Gurdaspur, dated the 28th April, 1955, dismissing the plaintiff's suit with costs. The Lower Appellate Court left the parties to bear their own costs.

RUP CHAND AND R. D. TALWAR, ADVOCATES, for the Appellant.

H. L. SARIN, K. L. KHANNA AND K. K. CUCCRIA, ADVOCATES, for the Respondents.

JUDGMENT

MAHAJAN, J.—This second appeal is directed against the concurrent decision of the Courts below dismissing the plaintiff's suit. The plaintiff is the Arya Pratinidhi Sabha, Punjab, Jullundur, a registered society under the Societies Registration Act (No. 21 of 1860). The property in dispute belonged to one Girdhari Lal. The defendants are related to him in the third degree. The following pedigree-table disclose their relationship:— Mahajan, J.



Girdhari Lal was a resident of Sujanpur, tehsil Pathankot, district Gurdaspur. It seems that he was possessed of considerable property, but in the present dispute we are concerned with land measuring 558 Kanals 19 Marlas. He made a will on the 16th of June, 1914. By this will he be queathed his entire property to his wife Dhan Devi. She was to enjoy its income for her life but was not entitled to alienate the same. After her death, a residential house and two shops described in the will were to go to the daughter, Shrimati Rukmani. She too was not entitled to alienate

Arya Pritinidhi Sabha, Punjab
v.
Dev Raj and another

Mahajan. J.

them and after her death they were to devolve on her children. 10 Ghamaons of land i.e., 80 kanals was to vest in Arya Samaj Sujanpur after the death of Shrimati Dhan Devi and the balance of the land was to go to the plaintiff Sabha. This will is witnessed by a large number of witnesses and was registered the next day, that is, the 17th of June, 1914. Girdhari Lal died in the year 1938 and his land was mutated in favour of his widow. The widow died on the 12th of March, 1942, and on her death the land was mutated in the name of the defendants on the 2nd of April, 1942, and the mutation was sanctioned on the 30th of April, 1942.

The present suit was filed for possession of the land by the Sabha on the 11th of March, 1954, that is the last day of limitation. The suit was filed in the Court of the District Judge, Gurdaspur, with an application for its transfer to the Court of the Senior Subordinate Judge, Gurdaspur, on the ground that another suit between the parties was pending before that Court. This application was made under section 23 of the Civil Procedure Code. The learned District Judge sent this case for determination to the Senior Subordinate Judge, Gurdaspur. This Court registered the suit on the 12th of April, 1954. It may be mentioned that an application was made to the District Judge to review his order assigning the suit to the Senior Subordinate Judge, Gurdaspur, by the defendants, but this application was rejected, principally on the ground that the plaintiff belonged to Jullundur and the defendants had to come to defend the suit from Delhi; and the balance of convenience was that the suit should be tried at Gurdaspur and not at Pathankot. The contention of the defendants in the review petition was that the land being situate in the tehsil of Pathankot, the suit should have been sent to the Subordinate Judge, Pathankot, for determination.

The suit was contested by the defendants on a number of grounds, but it is not necessary to recapitulate them. Suffice it to say that the principal defences were that the suit was barred by time, that Girdhari Lal did not execute a will and that if he had executed the will in question it had been revoked by him. Two out of these defences excepting the one that the will

had not been executed, prevailed with the trial Court with the result that the suit was dismissed on the 28th of April, 1955. An appeal was preferred to the District Judge, Gurdaspur, who remanded the case for a report after recasting the issue of limitation. It was sought to be ascertained by this remand as to whether the defendants had become owners of the suit land by adverse possession. The Senior Subordinate Judge sent his report on the 19th of May, 1958, and held that the defendants had proved their adverse possession. In the meantime the Senior Subordinate Judge who had tried the suit had become the District Judge and the appeal was transferred to the District Judge, Amritsar. After the report, the learned District Judge dismissed the appeal and upheld the findings of the Senior Subordinate Judge. It is against this decision that the present second appeal has been preferred by the plaintiff.

In this Court the learned counsel for the plaintiff has raised only two contentions, namely,—

1. that the decision of the learned District Judge that the suit is barred by time and that the defendants have become owners by adverse possession is wrong; and
2. that no revocation of the will by Girdhari Lal has been proved and the decision of the Courts below is incorrect and is based on conjectures.

The learned counsel for the defendants, in reply, has also raised the contention that it is not proved that Girdhari Lal ever made the alleged will.

I will now deal with each of the contentions in the order in which they have been set out above.

In order to determine whether the suit is barred by time or not or as to whether the defendants have become owners of the land by adverse possession, it is necessary, to set out the admitted and proved facts, These facts are that Girdhari Lal died in 1938. On his death Mst. Dhan Devi succeeded to his property.

Arya Pritinidhi Sabha, Punjab
v.
Dev Raj and another

Mahajan, J.

Both under the will and the law of succession governing the parties, Dhan Devi was to succeed to her husband to a life estate. She died on the 12th of March, 1942. Therefore, on her death the succession to the estate of Girdhari Lal opened and according to the will the property was to devolve on his daughter Rukmani, the Arya Samaj Sujanpur and the plaintiff. It is no doubt true that there is nothing on the record, to show whether Arya Samaj Sujanpur laid any claim to this land on the death of Dhan Devi. So far as the daughter, Rukmani, is concerned she was dead and, therefore, there was no question of her succeeding to the property. As regards the plaintiff, no claim was made on the death of Dhan Devi. However, the present suit has been filed on the last day of limitation, that is, the 11th of March, 1954. It is necessary to state that the original will is not forthcoming. In the normal course of events original will on the death of Girdhari Lal must have fallen in possession of Dhan Devi and on her death into the hands of the defendants for it is they who took possession of the estate and in whose favour the mutation was sanctioned on the death of Dhan Devi of the estate of Girdhari Lal.

The trial Court held the suit to be barred by time on the ground that the death entry of Dhan Devi was suspicious and that she must have died some time before 12th March, 1942. However, the learned District Judge, Gurdaspur, held the suit to be barred by time on another ground. According to the learned Judge the suit was not filed on 11th March, 1954 when the plaint was presented in the Court of the District Judge but on the 12th April, 1954, that is, the date on which the plaint was registered with the Senior Subordinate Judge, Gurdaspur. Therefore, if the suit is barred by time naturally the defendants would be deemed to have become owners of the land by adverse possession.

Therefore, the short question that really requires determination is as to when the suit was filed. The learned District Judge found—

> "that the plaint though presented to the District Judge Gurdaspur was rightly presented because he had jurisdiction to send it to

> any Judge. So the date of its presentation will not be taken to be one when it was received by the Subordinate Judge Pathankot to whom it should have been sent."

It may be mentioned that the observations in the aforesaid quotation that the suit was sent to Pathankot are wrong. The suit was sent to and was tried by the Senior Subordinate Judge, Gurdaspur. It is curious that in spite of the finding that the plaint was rightly presented to the District Judge the lower appellate Court proceeded to take the date of registration of the suit with the Senior Subordinate Judge as the date of the institution of the suit and not the date when the plaint was actually presented in the Court of the District Judge, that is, the 11th of March, 1954. The plaint is headed 'in the Court of the District Judge, Gurdaspur' and was filed in that Court. No doubt it was accompanied by an application, as already mentioned, for its transfer to the Senior Subordinate Judge, Gurdaspur. It is also true that in the ordinary course of things, the suit should have been tried at Pathankot. Thus in these circumstances can it be said that the suit was not properly filed when the plaint was presented in the Court of District Judge, Gurdaspur ? If the plaint was properly presented in the Court of the District Judge the suit must be held to be filed on the 11th of March, 1954, and would consequently be within limitation

It cannot be disputed that the Court of the District Judge is the principal Court of Civil Jurisdiction in the district and is competent to try all suits of any value. In this connection, reference may be made to section 24 of the Punjab Courts Act (VI of 1918), which is in these terms:—

> "24. The Court of the District Judge shall be deemed to be the District Court or principal civil Court of original jurisdiction in the district."

The short question that requires determination is whether the plaint was properly presented to the District Judge, Gurdaspur. The learned counsel for the

Arya Pritinidhi Sabha, Punjab
v.
Dev Raj and another

Mahajan, J.

respondents contends that the suit must be deemed to have been instituted on the day when the Senior Subordinate Judge, Gurdaspur received the plaint for registration relied on a Single Bench decision of this Court in *Sewa Singh* v. *Tara Chand* (1). No doubt this decision does support his contention, but after carefully examining the matter we are of the view, with utmost respect to the learned Judge, this decision does not lay down the correct rule of law.

In the first instance it seems that the provisions of section 24 of the Punjab Courts Act, already referred to above, were not brought to the notice of the learned Judge. Moreover, the learned Judge relied on a decision of the Lahore High Court in *Sharam Singh* v. *Sadhu Singh* (2) for the proposition that—

> "the power of the District Judge or the Court or Officer who has been appointed to receive the plaint is merely a ministerial one and when the "power has been given by the District Judge to another Court or an officer, the litigant must present the plaint to him."

In *Sharam Singh's case* the plaint was presented to the Senior Subordinate Judge and it cannot be disputed that the Senior Subordinate Judge is not the principal Court of original civil jurisdiction in the district and has been merely appointed by the District Judge under section 37 of the Punjab Courts Act to receive plaints for purposes of distribution, but even then it was held in *Sharam Singh's case* that when a plaint is received by the Senior Subordinate Judge for purposes of distribution and, thereafter reaches the Court of the Judge who will dispose of the same the date of presentation of the plaint to the Senior Subordinate Judge is taken to be the date on which the suit is filed for purposes of limitation and kindred matters. Therefore, even if it be assumed that the plaint was presented to the District Judge as merely a distributing Officer, according to the decision in *Sharam Singh's case* for purposes of limitation the presentation to the District

(1) A.I.R. 1956 Punj. 30.
(2) A.I.R. 1928 Lah. 484.

Judge would be taken to be the date of the filing of the suit vis-a-vis the Court which ultimately received it for trial. It seems that pointed attention of the learned Judge, who decided *Sewa Singh's case* was not drawn to this aspect of the decision in *Sharam Singh's* case. Moreover, the position of the District Judge and the Senior Subordinate Judge in the matter of receipt of plaints stands on a totally different footing. So far as the former is concerned, he has the jurisdiction to receive plaints in suits of all kinds and decide the same but so far as the Senior Subordinate Judge is concerned he is merely a distributing officer to whom powers of distribution have been delegated under section 37 of the Punjab Courts Acts. Section 37 does not make him the principal Civil Court of original jurisdiction and equate him for all purposes with the Court of the District Judge. That being so, it must be held that the rule laid in *Sewa Singh's case* is not the correct rule of law. It may be pointed out that the rule in section 15 of the Code of Civil Procedure that every suit should be instituted in the Court of the lowest grade competent to try it is merely intended for the protection of the Courts of the higher grade, but it does not otherwise affect the jurisdiction of Courts and the filing of the suit in the higher Court will not mean that the suit is not filed in the Court of proper jurisdiction provided that Court is competent to try it. In this connection, reference may be made to *Ratan Sen alias Ratan Lal* v. *Suraj Bhan and others*, (3). See also *Nidhi Lal* v. *Mazhar Hussain and another*, (4), *Bishamber Dyal* v. *Girdhari Lal* (5), *Dakor Temhle Committee* v. *Shankerlal* (6) and *Matra Mondal* v. *Hari Mohun Mullick*, (7).

It is not a case here that the plaint was presented to a Court which had no jurisdiction. It is also not a case where the plaint was presented to a Court for purposes of distribution. The plaint was presented to a Court which has the jurisdiction to entertain it and may not have entertained it for the reason that its

(3) A.I.R. 1944 All. 1.
(4) I.L.R. 7 All. 230.
(5) A.I.R. 1953 All. 158.
(6) A.I.R. 1944 Bom. 300.
(7) I.L.R. 17 Cal. 155.

Arya Pritinidhi Sabha, Punjab
v.
Dev Raj and another

Mahajan, J.

file may have been burdened, but all the same the suit must be deemed to have been filed in the Court of proper jurisdiction for purposes of limitation. Therefore, it must be held that the Courts below were in error in holding the suit to be barred by time. The suit must be taken to have been filed on the 11th March, 1954, and it is not disputed that on that date the suit would be within limitation.

I only wish to point out that the learned counsel for the respondents did not try to support the decision on the question of limitation on the ground which prevailed with the trial Court, namely, that the date of death of Shrimati Dhan Devi could not be ascertained from the death certificate. It is admitted that if the plaint is taken to have been presented on the 11th of March, 1954, in a Court of competent jurisdiction, then the suit would be within limitation.

This brings me to the consideration of the second question, namely, whether Girdhari Lal revoked the will. The Courts below have held in favour of revocation on the ground that the original will is not forthcoming and also that the original will was not set up on the death of Girdhari Lal. So far as Dhan Devi was concerned she was bound to succeed both under the will and under the law of succession governing Girdhari Lal and in either of these eventualities she was to get a life estate. So far as the plaintiff is concerned it did not come in the picture at all at that point of time. On the other hand, it has been held by the Courts below that the will was in possession of Dhan Devi and on her death it must have fallen into the hands of the defendants. This finding has been given while dealing with the letting in of secondary evidence of the will and this finding would militate against the view that the will was revoked. Before a presumption of revocation of a will can be raised it must be proved that on the death of the testator a search for the will was made and it was not found. There is no evidence on the record that any search was made for the will and it was not found. No question of any search would arise because Dhan Devi was to succeed and did succeed. No one did question or was interested in questioning her rights and, therefore, there was no

occasion for a search being made for the will. It may be that Dhan Devi was not interested in giving publicity to the will and, there may be variety of reasons for that. Suffice it to say that in the circumstances of the case it cannot be held that the will was not forthcoming on the death of the testator and that being so no presumption can be raised that the testator had revoked the will. The evidence as to revocation of the will is sought to be led after the death of Dhan Devi. That evidence would be of no use because the material time to prove the revocation of the will was when the testator died because it is he alone who could revoke the will. The mere fact that the will was not set up soon after the death of Dhan Devi would be of no consequence.

The rule is now firmly settled that the presumption of English law that when a will is traced to the possession of the deceased and is not forthcoming at his death, is that he has destroyed it, must be applied in India with considerable caution. In this connection reference may be made to the decision of the Punjab Chief Court in *Hanwanta* v. *Padman* (8). The learned Judge of the Chief Court at page 1165 of the report observed as under:—

> "Mr. Lal Chand for plaintiffs cited *Shiv Sabitri Prasad* v. *The Collector of Meerut* (9) and *Anwar Husain* v. *The Secretary of State for India* (10) both of which are very much in point. In the former it was laid down that the above quoted presumption of English law would not be so strong in India as in England, and that under the circumstances of that particular case did not arise at all. The special circumstances were that there was no evidence to show that a search for the will was made by any responsible person at the time of the testator's death and that it was not forthcoming then. In the Calcutta case it was held that the presumption did not arise

(8) 4 I.C. 1164.
(9) I.L.R. 29 All. 82.
(10) I.L.R. 31 Cal. 885.

Arya Pritinidhi Sabha, Punjab
v.
Dev Raj and another

Mahajan, J.

unless there was evidence to satisfy the Court that the will was not in existence at the time of the testator's death. Applying these rulings to the present case, we must hold that no presumption arises from the mere fact that the will is not now forthcoming. No allegation was ever made that the will was searched for immediately after Daula's death and having regard to the habits of the people, we do not think that it would have been so searched for."

An appeal was taken to the Privy Council against this decision of the Chief Court. While disposing of the appeal, their Lordships of the Privy Council made the following observations at page 378 of *Padaman* v. *Hanwanta* (11):—

> "As regards the question of revocation, the Chief Court after reviewing all the circumstances said as follows:—
>
> "We think that the more reasonable presumption in this case is that the will was mislaid and lost or else was stolen by one of the defendants after the death of Daula, and they held that in their opinion it was not revoked. Their Lordships think that it was perfectly within the competency of the learned Judges to come to that finding. Much stress has been laid on the view expressed by Baron Parke, in *Welch* v. *Phillips* (12), that when a will is traced to the possession of the deceased and is not forthcoming at his death the presumption is that he has destroyed it. In view of the habits and conditions of the people of India this rule of law, if it can be so called, must be applied with considerable caution. In the present case the

(11) 93 P.R. 1915.
(12) 1 Moore P.C. 299.

deceased was a very old man, and towards the end of his life, almost imbecile. There is nothing definite to show that he had any motive to destroy the will or was mentally competent to do so. On the other hand, the circumstances favour the view the Chief Court has taken that the will was either mislaid or stolen."

In this connection reference may also be made to *Shib Sabitri Parshad* v. *Collector, Meerut* (9), *Babu Lal Singh and another* v. *Baijnath Singh and another* (13). *Deputy Commisioner Lucknow* v. *The Estate of Lala Kali Charan* (14) and *Sarat Chandra Basack* v. *Golapa Sundri* (15).

The onus to prove that the will was revoked by the testator lies on the person alleging revocation. See *Ramchandra Ayyar* v. *Ranganayaki Ammal* (16) Each case will depend on its own facts and no general rule can be laid down as to when the loss of the original will is tantamount to revocation (*See Efari Dasya* v. *Podei Dasya,* (17).

In the present case the will would come into possession and did come into possession of the persons interested to deny it, as has been found by the Courts below. Thus no presumption that it was revoked by the testator can be raised. Moreover, no *bona fide* search for it is proved to have been made at the testator's death, nor was there any occasion for such a search. This is a case where the original will is not lost but is being withheld by the interested parties.

For the reasons given above we disagree with the decision of the Courts below to the effect that the will was revoked and hold that on the facts and circumstances of this case, it is not proved that the will

(13) A.I.R. 1946 Pat. 24.
(14) 8 I.C. 695.
(15) 18 C.W.N. 527.
(16) A.I.R. 1941 Mad. 612.
(17) A.I.R. 1922 Cal. 307.

Arya Pritinidhi Sabha, Punjab
v.
Dev Raj and another

Mahajan, J.

was ever revoked by the testator. It must be remembered that the will is a registered will and was registered like an ordinary deed and in case the testator wanted to revoke it, he would have taken steps to publicise the revocation in the same manner as he did in the case of its making.

This leads me to a determine the contention that has been raised by the learned counsel for the respondents, namely, that it is not proved that Girdhari Lal ever executed the alleged will. A number of contentions have been advanced by the learned counsel on this matter. His first contention is that the copy of the registered will is not admissible unless it is proved that the original will was executed as provided in section 63 of the Indian Succession Act. An attempt was made by the appellants to produce some of the attesting witnesses. They did state that the testator executed a will and that they were witnesses to the same, but they were not in a position to say whether the copy shown to them was that of that will, Unless they were shown the original to which they were signatories they were not in a position to affirmatively state that the copy shown to them was that of the original to which they were witnesses. It must be remembered that the will was made as far back as 1914 and, therefore, it could be humanly impossible to remember the contents of a will to which the attesting witnesses subscribed their signatures. Therefore, technically the requirements of section 63 of the Indian Succession Act would not be satisfied. This, however, is of no avail to the learned counsel for the respondents because before the 1st of January, 1917, so far as the wills made by a Hindu in the Punjab were concerned, no legal formalities were required to effecuate the same. In other words it was not necessary to draw out a will in accordance with the provisions of section 63 of the Indian Succession Act. The position, at the time was that a Hindu could make an oral will and in the case of a written will it was not necessary to attest the same. In this connection, reference may be made to *Mussammat Suniya* v. *Mani Ram* (18),

(18) 74 P.R. 1891.

Hori Lal Jha v. *Mst. Rasili Kunwar* (19) and *Ketki Ranjan Bhattacharyya* v. *Kali Prasanna Bhattacharyya* (20). Therefore, the objections based on the ground that the requirements of section 63 have been complied with or, in other words, that the will is not proved as required by the Indian Succession Act are of no avail. Faced with this difficulty, the learned counsel sought to contend that the certified copy of the registered will is not admissible in evidence. The short answer to this argument is that in view of the fact that the original will is not available, its secondary evidence can be led as required by section 63 read with section 65 of the Indian Evidence Act. The Courts below have unanimously come to the conclusion, that secondary evidence is admissible in this case, for the reason that the will is being withheld by the respondents. According to clause (f) of section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition and contents of a document 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, and in such a case according to section 65, it is only the certified copy of the document which is admissible. According to section 57 of the Indian Registration Act, certified copies of documents registered have to be supplied by the Registrar to all persons applying for the same and according to sub-section (5) of section 57, such copies given under this section shall be admissible for the purpose to prove the contents of the original documents. Therefore, if all these provisions of the Indian Evidence Act and the Indian Registration Act are read together, there can be no manner of doubt that the certified copy of the will produced in this case would be sufficient proof of the will. See in this connect, *M. Ihtishan Ali* v. *Jamna Prasad* (21). Otherwise very strange results will accrue. The original will is not available. The executant is dead and the witnesses are not in a position to state from the copy whether the document which they had signed as witnesses was the same of which

(19) I.L.R. 1949 All: 776.
(20) A.I.R. 1956 Tripura 18.
(21) A.I.R. 1922 P.C. 56.

Arya Pritinidh Sabha, Punjab
v.
Dev Raj and another

Mahajan, J.

the certified copy was being shown to them. It would, in fact, really defeat the purpose of the Registration Act if such certified copies were not admissible in evidence, and in my view argument of the learned counsel must be repelled on this score as well.

The learned counsel for the respondents relied on *Gopal Das* v. *Sri Thakurji* (22) *Salimatul Fatima* v. *Koylashpoti Narain Singh* (23) *Bulakidas Hardas Mahesari* v. *S.K. Chotu Paikan* (24) *Kartar Singh* v. *Didar Singh* (25) and *Madholal Sindhu* v. *Asian Assurance Co. Ltd.*, (26), in support of his contention that the certified copy is not admissible in evidence till the execution of the original is proved. So far as the execution of the original will is concerned, it is proved by the endorsement of the Registrar. That endorsement leaves no manner of doubt that the will was executed by Girdhari Lal to whom it was read over and who admitted its contents to be correct. Therefore, a certified copy of that will would be admissible in evidence in view of the fact that the original is not forthcoming and is being withheld by the respondents. None of the cases cited by the learned counsel has any bearing on the present controversy. That being so, the contention of the learned counsel on this score is also repelled.

For the reasons given above, this appeal is allowed the decision of the Courts below is set aside and the plaintiffs' suit is decreed. However, in view of the difficult nature of the question involved the parties are left to bear their own costs throughout.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B. R. T.

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(22) A.I.R. 1936 All. 422.
(23) I.L.R. 17 Cal. 903.
(24) A.I.R. 1942 Nag. 84.
(25) A.I.R. 1934 Lah. 282.
(26) A.I.R. 1954 Bom. 305.