

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1612 of 2015 (O&M)

Date of Decision.09.10.2015

Adesh Kumar and another

.....Petitioners

Versus

Kishan son of Mool Chand

.....Respondent

Present: Mr. Pulkit Dagar, Advocate for
Mr. Rajesh Lamba, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

C.M. No.8152-CII of 2015

For the reasons stated in the application, order passed by this Court on 31.03.2015 is recalled and the revision petition is restored to its original number.

Application is allowed.

C.R. No.1612 of 2015

1. The revision petition has been filed against an order dismissing the application filed by the defendant for rejection of plaint. The suit has been filed on the basis that the property was held by the plaintiff's predecessor Sarbati as mortgagee and that she died in the year 1950 and her right to the property had survived to her. The defendant contends that he had taken the property by a power of attorney from Sarbati in the year 2010 and a sale deed drawn

subsequently. The contention taken in defence and the basis for the application was that the plaintiff has cleverly instituted the suit for declaration without taking notice of the fact that Sarbati had herself executed a power of attorney and later a sale deed has also been executed. Without a prayer for setting aside the sale, the suit could not be instituted.

2. The suit stands and falls by the assertion made by the plaintiff that Sarbati died in the year 1950 and the so-called power of attorney and the sale deed executed in the year 2010 are not valid. If the plaintiff is unable to prove the Sarbati's death in the year 1950 and the defendant is able to establish that Sarbati died only in the year 2010 when she executed a power of attorney then the suit will fail. The court fee issue will always be decided in the manner in which the plaint is drawn. The plaint will fail if the plaintiff is unable to show that Sarbati died in the year 1950 and consequently, the document purported to have been executed by her in the year 2010 cannot be valid. I do not think that there is any error in the assessment of court fee made on the basis of death of Sarbati as having occurred in the year 2010.

3. The dismissal of the application for rejection of plaint is maintained and the revision petition is dismissed.

(K. KANNAN)
JUDGE

October 09, 2015
Pankaj*