

**In the High Court of Punjab and Haryana at Chandigarh**

**CR-1706-2015**

Date of decision: 11.03.2015

**Laxman Dass @ Lachhman Dass**

**.....Petitioner**

Versus

**Ram Lal and Others**

**.....Respondents**

**CORAM: HON'BLE MRS. JUSTICE SABINA**

Present: Mr.Samir Rathaur,Advocate  
for the petitioner

\*\*\*\*

**SABINA, J.**

Petitioner has filed this petition challenging the order dated 20.2.2015 (Annexure P5) whereby application moved by the petitioner for framing the additional issues, was dismissed.

I have heard the learned counsel for the petitioner and have gone through the record available on the file carefully.

Petitioner has filed a suit for declaration and possession. During the pendency of the suit, petitioner moved an application that the following additional issue be framed:-

“Whether Krishna Wanti @ Krishni ever executed and registered any will on dated 16.12.1993 in favour of defendant no.1?OPD”

Trial Court, while dismissing the application, vide the impugned order dated 20.2.2015 (Annexure P5) has observed as under:-

“From the pleadings, it is revealed that the plaintiff has challenged the will dated 16.12.1993 of Krishnawanti which was in favour of defendant no.1. Ramlal who is brother of the plaintiff. Defendant no.1 never appeared in the present case and was proceeded against exparte on 31.7.2013. The answering defendants are subsequent purchaser from defendant no.1. As such the will was not in favour of the answering defendants and they are not the propounder of the will and were never party or beneficiary to the will in question. From the written statement it is revealed that answering defendants are staking their claim on the basis of bonafide purchaser for consideration. In these circumstances, the onus to prove the execution and registration of the will in question cannot be fixed on the answering defendants. From the pleadings of the parties, the issues have already been framed and accordingly the present application is not maintainable and therefore, same is hereby dismissed with no order as to costs. Now to come up on 25.2.2015 for evidence of defendant's at own responsibility.”

The reasons given by the trial Court, while dismissing the application are sound reasons. The Will in question was propounded by defendant No.1 and only he could prove due execution of the Will. However, defendant No.1 was proceeded ex-

parte. Hence, the framing of the additional issue would not serve any purpose as no evidence can be lead qua the said issue on account of ex-parte proceedings against defendant No.1. No ground for interference is made out.

Dismissed.

**(SABINA)  
JUDGE**

**March 11,2014**

arya