

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.6131 of 2015 (O&M)
Date of decision: 17.09.2015**

Simarjit Kaur and another ... Petitioners

Vs.

Karamjit Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Parminder Singh, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 29.08.2015 (Annexure P-5), whereby, the application filed by the petitioner-plaintiffs, under Order 8 Rule 1 CPC, calling upon the defendant/respondents to produce the oral Will dated 10.05.1995, has been dismissed.

Mr. Parminder Singh, learned counsel appearing on behalf of the petitioner-plaintiffs submits that suit filed by the plaintiff/petitioners is for declaration to the effect that mutation entered and sanctioned on the basis of oral Will is illegal, null, void, false and not binding upon the rights of the plaintiff-petitioners and are entitled to 3/5th share in the estate of deceased Jagir Singh son

of Ujjagar Singh, therefore, the impugned order, dismissing the application, suffers from illegality, infirmity and perversity, therefore, liable to be set aside.

I have heard learned counsel for the petitioner/plaintiffs and appraised the paper book.

On the basis of the pleading of the parties, onus to prove the Will is on the defendants. It would be apt to reproduce issue herein below, which reads thus:-

“Whether plaintiffs are entitled to declaration that Will dated 10.5.1995 and mutation No.8717 qua the suit property is illegal, null and void? OPD”

Since the onus is on the respondent/defendants, application at the instance of the petitioner/plaintiffs is wholly misconceived and the petitioner/plaintiffs would have a right in rebuttal after the onus is discharged by the respondent/defendants. I do not find any illegality, infirmity and perversity in the impugned order and the same cannot be said without jurisdiction.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

September 17, 2015
savita