

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

C.R. No. 6275 of 2015 (O&M)

Date of decision:- 23.09.2015

Gurwinder Singh through his attorney Rajwinder Kaur

...Petitioner

Versus

Sukhminder Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Satpreet Grewal Kapila, Advocate
for the petitioner.

RITU BAHRI J.(Oral)

Plaintiff/Petitioner (for short 'petitioner') has filed the instant revision petition under Article 227 of the Constitution of India assailing order dated 08.09.2015 (Annexure P-4) passed by learned Addl. Civil Judge (Jr. Divn.), Dasuya whereby the evidence of the petitioner was closed.

Learned counsel for the petitioner submits that the petitioner/plaintiff filed a suit for declaration to the effect that she is co-owner in joint possession to the extent of 1/3rd share of the estate of the deceased on basis of registered will dated 04.04.1995 executed by Gurdass Singh in favour of his three sons. The issues were framed after which the petitioner's evidence was started.

Learned counsel for the petitioner submits that the learned trial Court has failed to consider this fact that the petitioner has to prove his case by evidence. Although the will is registered one but still the marginal witnesses have to be examined to prove the due execution of the will and

since one of the marginal witness namely Mahinder Singh has already died therefore the original marginal witness namely Avtar Singh is necessary witness to examine for proving the due execution of the will.

Learned counsel admitted the fact that some opportunities were taken to serve Avtar Singh but since he was residing in Dubai, he could not be served.

I have heard learned counsel for the petitioner and perused the case file.

For a fair decision of the suit, order dated 08.09.2015 (Annexure P-6) passed by learned Addl. Civil Judge (Jr. Divn.), Dasuya is hereby set aside and the instant revision petition is **allowed** and the trial Court is directed to give one effective opportunity to the petitioner to conclude his evidence by examining marginal witness Avtar Singh, subject to payment of Rs.10000/- as cost to be deposited before the District State Legal Services Authority, Dasuya.

September 23, 2015
G Arora

(**RITU BAHRI**)
JUDGE