

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

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Regular Second Appeal No.44 of 2014 (O&M)

Date of Decision: August 14, 2015

Balbir Singh

...Appellant

Versus

Harbhajan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Satinder Khanna, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 08.08.2012 passed by the Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar, whereby the suit for declaration with consequential relief of permanent injunction and in the alternative for joint possession, stands dismissed, against which an appeal preferred by the appellant-plaintiff also stands dismissed by the Additional District Judge, Shaheed Bhagat Singh Nagar, on 20.07.2013.

2. Counsel for the appellant-plaintiff has stressed upon the question that the executant of the Will namely Gainda Singh, who was the father of the appellant-plaintiff as also the respondents-defendants, was admitted in the hospital and on his discharge on the ground that he being an old man and infirm, nothing could be done with regard to his poor health, thus, could not have proceeded to execute a Will on 22.12.2003. He submits that the execution of the Will is doubtful as Gainda Singh died on 04.01.2004, which is hardly 15 days from the date of the execution of the Will. He, therefore, contends that the Will, which has been made the basis

for denying the appellant-plaintiff of his share in his father's property, cannot be said to be justified and in accordance with law. He, therefore, prays that the appeal may be allowed by setting aside the judgments and decree of the Courts below.

3. I have considered the submissions made by the counsel for the appellant-plaintiff and have gone through the judgments passed by the Courts below.

4. The issue with regard to the execution of the Will dated 22.12.2003 by Gainda Singh in favour of respondent-defendant No.1 Harbhajan Singh has been raised and duly considered with regard to he being sound and of disposing mind at that stage.

5. Perusal of the judgments indicate that the respondent-defendant No.1 Harbhajan Singh, on the basis of the evidence, has been able to prove that the said Will has been executed by Shri Gainda Singh in a sound and disposing mind.

6. The findings recorded by the Courts below on the basis of the evidence led which included the Sarpanch and also the Panch of village Malikpur, who are the attesting witnesses apart from the statement of respondent-defendant No.1, leaves no manner of doubt that the Will had been executed more so when the same is duly registered one. It has further come on evidence that the Sub Registrar, at the time of registration of the Will, had read over the contents of the Will to Gainda Singh, who after hearing the same, thumb marked the endorsement in token of its correctness. It appears that the Sub Registrar satisfied himself with regard to the state of mind of deceased Gainda Singh at the time of execution of the Will.

7. In view of the findings recorded by the Courts below, the

assertion of the counsel for the appellant-plaintiff cannot be accepted.

Further the evidence has rightly been appreciated and given effect to.

8. In any case, no substantial question of law arises in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.123-C of 2014, also stands dismissed.

August 14, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**