

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

129

RSA-4874-2014(O&M)

Date of Decision: September 14,2015.

JAGDEEP SINGH

.....APPELLANT-PLAINTIFF

VERSUS

JAGJEET SINGH AND ORS

.....RESPONDENTS-DEFENDANTS

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr.Kanwal Goyal,Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.(Oral)

Challenge in this appeal is to the judgments and decree passed by the Courts below vide which the suit for declaration preferred by the appellant-plaintiff to the effect that he is owner to the extent of 1/4th share of the land earlier owned and possessed by Dalbir Singh s/o Shiv Dev Singh of village Pholriwal, Hisar and mutation sanctioned in favour of the defendant No.1 Jagjeet Singh regarding the above land, after the death of Dalbir Singh is illegal, unlawful, void and does not confer any right, title or interest therein and suit for permanent injunction stands dismissed on 06.02.2013 by Additional Civil Judge(Senior Division), Jalandhar and the appeal preferred has also been dismissed by the lower Appellate Court on 05.04.2014.

It is the contention of the learned counsel for the appellant that Jagjeet Singh has not appeared as a witness before the trial Court and only her Power of Attorney, Baldev Kaur (defendant No.2) his mother, has appeared and deposed on his behalf as well as for her own behalf. She in her statement has not stated anything about the execution of Will. However she stated that there is a registered deed. Further contention is that attestator Surjit Singh was not present at the time of attestation of the Will and is an interested witness but these facts were

not considered by the Courts below.

This contention raised by the counsel for the appellant can not be accepted in the light of the fact that it is not mandatory in the suit that the defendant should himself appear before the Court and depose. If a valid Power of Attorney has been produced and the said Power of Attorney holder has deposed in the case with regard to the stand of the party that would suffice. Since nothing adverse has come out in the cross examination of the witnesses about the execution of the Will, an argument has been raised by the counsel that an attesting witness has not appeared before The Sub Registrar at the time of registration of the Will, which casts a serious doubt about the authenticity and execution of the Will which has not been proved but this agreement deserves rejection as the attesting witness, who has appeared as a witness in the case, has deposed with regard to the details of the execution of the Will. Further there is no legal requirement that the attesting witness of the Will should be present at the time of execution and registration of the document. It may be added here that registration of a Will or otherwise will not invalidate the Will nor is the registration of a Will mandatory under the statute.

Concurrent findings recorded by the Courts below which is based on proper appreciation of evidence led by the parties can not be interfered with and further, there is no substantial question of law involved in the present appeal. The appeal carries no merit and as such stands dismissed.

Pending Civil Misc. applications also stand disposed of.

September 14, 2015
TSG

(AUGUSTINE GEORGE MASIH)
JUDGE