

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3459 of 2016

Date of Decision.17.05.2016

Maninder Kaur @ Neetu

.....Petitioner

Vs.

Simarjit Kaur

.....Respondent

Present: Mr. Aman Pal, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. In a suit challenging a Will said to have been executed by the mother of the parties who were sisters, the contention by the defendant-sister in an independent suit filed by her is that the alleged power of attorney in favour of the third party under a transfer purported to have been made in favour of the petitioner is not true and that she is entitled to property by virtue of the Will which is challenged. An application under Section 10 CPC has been filed by the plaintiff in the suit filed by the defendant subsequently that since the issue of Will has been brought out in an earlier suit, the subsequent suit must be stayed till the disposal of the first case.

2. The plaintiff's claim to the right to the property which is claimed by the defendant in the subsequent suit is through an instrument of power of attorney which the mother has made in favour of the third party and that third party has actually transferred the right by

means of gift in the year 2008. The Will was said to have been made in the year 2011 and plaintiff's own right to the property will have primacy to a consideration of whether the Will was true or not. In either case, if the plaintiff is able to establish that there was a power of attorney executed in favour of third party and that an agent had the authority to transfer including a gift, the right which the plaintiff now claims will not in any way be affected by an adjudication rendered with reference to the Will. The matter at issue in both the suits are different and there is no congruity for consideration in both the suits. The application under Section 10 CPC was rightly dismissed although I uphold the order by different reasons as set out above.

3. The revision petition is disposed of with the above observations.

(K. KANNAN)
JUDGE

May 17, 2016
Pankaj*