



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

129

CR-1799-2024
Date of decision : 24.10.2024

Gurjant Kaur @ Kulvir Kaur Petitioner

versus

Yadwinder Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anil Kumar Garg, Advocate
for the petitioner.

Mr. S.S. Salar, Advocate
for respondents No.1 and 2.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against order dated 15.01.2024, whereby application filed by the defendants to prove Will dated 09.09.2002 executed by Hazura Singh in favour of the plaintiff-Yadwinder Singh by way of secondary evidence has been dismissed.
2. Trial Court while dismissing the application came to the conclusion that the plaintiff has not based his claim on the basis of Will sought to be produced by leading secondary evidence. The said evidence being beyond pleadings cannot be allowed to be proved by way of secondary evidence or direct evidence.
3. Counsel for the petitioner submits that though the suit is for permanent injunction, the defendant has propounded writing dated 25.04.1979 which also has thumb impressions of Hazura Singh and was executed by Hazura Singh. He sought production of the Will only to compare the thumb impression.



4. In the considered opinion of this Court, once defendant has propounded writing dated 25.04.1979 which he claims to have been executed by Hazura Singh, it is the said document which he needs to prove. In order to prove the same, there was no requirement for the petitioner to prove the Will by leading secondary evidence. The application was totally misconceived. No fault can be found with the orders passed by the Trial Court declining the prayer filed under Section 65 of the Evidence Act to lead secondary evidence.

5. Resultantly, the present petition is dismissed.

6. Needless to say anything observed herein shall not be construed as an impediment in the way of the defendants to prove the said writing independently.

(PANKAJ JAIN)
JUDGE

24.10.2024

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Whether speaking/reasoned : Yes

Whether Reportable : No