

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4356 of 2011 (O&M)

Date of Decision: 14.05.2015

Ram Sarup

..... Appellant

Versus

Satwanti and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.12576-C of 2011

This is an application for condonation of delay of 7 days in filing the present appeal.

Since the main appeal has been dismissed, therefore, no orders are required to be passed in the application.

RSA No.4356 of 2011 (O&M)

It may be noted that this appeal was filed in 2011 and has remained pending motion hearing since then without any effective order passed in seeking adjournments after adjournments, which now rather apparently were for the reason that there is nothing in the appeal to be urged or argued and the appeal has been kept floating unnecessarily for the last four years taking advantage of the benign indulgence of the Court.

This is plaintiff's second appeal against the concurrent findings of facts recorded by both the Courts below.

Late Palu Ram Lamberdar son of Late Shri Matu Ram was father of the plaintiff and defendant Nos.1 to 3. He died in September 1996.

Defendant Nos.2 and 3 were married daughters living in their respective matrimonial homes in village in Bhiwani when the suit was filed. It was said that defendant No.1 had come to occupy a residential house of Palu Ram during his life time while the plaintiff had constructed his house elsewhere and was residing therein.

Palu Ram left behind commercial properties as well. He had five shops in a Municipal area in Rohtak and was drawing rent from them during his life time.

The suit was contested by the defendants by propounding a testamentary Will in their favour executed by Palu Ram on March 15, 1993 three years before he died. The Will was not registered and the Appeal Court did not find this a suspicious circumstance to discard the Will by correctly inferring that Palu Ram being a Lambardar of the village would have known that both registered and unregistered Wills are testamentary dispositions capable of bequeathing property and unless there are good and sufficient reasons to reject them or doubt their genuineness both hold good and true. Therefore, if Palu Ram did not register the Will it is of little consequence so long as the other ingredients and tests required for proving a testamentary Will, registered or otherwise, in accordance with law stand satisfied. But those bare essentials are in the domain of facts pleaded and proved at the trial and both the Courts below have relied on the Will as valid and this Court in second appeal would be loathe to interfere in the findings of fact recorded where questions of fact and law have been

reasonably dealt with in accordance with law and nothing survives to be examined after being thrashed out by the two Courts below and only such errors of fact or errors of law which gives rise to a substantial question of law can be considered by this Court on its second appeal side.

I find no legal issue or a substantial question of law arising in this appeal having perused the appeal papers on the dais; the counsel not having appeared to argue the appeal when the case was called on for hearing. The three questions of law proposed by the appellant in the grounds of appeal are as follows:-

"i) Whether the plaintiff/appellant is entitled to inherent his share from the property left by his late father expired without any disbursement of the same?

ii) Whether the impugned Judgment and decree passed by both the Courts below are manifest, illegal, perverse, and result of misreading of pleading and evidence, hence the same deserve to be set aside?

iii) Whether misreading of evidence by the ld. Courts below is by itself a substantial question of law?"

The above three questions proposed by the appellant do not arise or require consideration in view of the findings recorded by the courts a quo with respect to the testamentary will nor is found any other significant thing emerging for this Court to formulate any other question or remould the existing ones since none surfaces apparently from the case papers.

Accordingly, the appeal fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

14.05.2015
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