

RSA No.2229 of 2012 (O&M)

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

RSA No.2229 of 2012 (O&M)

Date of Decision: September 21, 2015

Dhan Pati & others

...Appellants

Versus

Smt. Chhano Devi & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.P. Chahar, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.6221-C of 2012

Prayer in this application is for condonation of delay of 489 days in re-filing the appeal.

It is the contention of the learned counsel for the applicant-appellants that the reason for delay in re-filing the appeal is that initially, the appeal was filed on 08.11.2010 but certain objections were raised by the Registry and the case file was returned back. Because of paucity of the space in the office of the counsel, the file got mixed up with some other cases and on tracing the same with great difficulty and removing the objections, the appeal was re-filed which has resulted in the delay of 489 days in re-filing the same. The application is duly supported by an affidavit of counsel for the

RSA No.2229 of 2012 (O&M)

applicant-appellants.

For the reasons mentioned in the application, the same is allowed. Delay of 489 days in re-filing the appeal, stands condoned.

RSA No.2229 of 2012

It is the contention of the learned counsel for the appellant-plaintiffs that the Courts below have not appreciated the evidence in the right perspective which has led to mis-reading the same. He contends that the subsequent Will dated 22.05.2002 which was registered on 23.05.2002 is a forged and fabricated document and the same was executed in suspicious circumstances. He contends that after the execution of the alleged Will, the father of the parties, namely, Shri Deiya, died on 27.05.2002, in fact, he was suffering from paralysis and could not take his own decision and therefore, was not in correct disposing mind, which would clearly indicate that the second Will was not the one which he actually intended to execute in the light of the fact that there was an earlier Will executed on 19.05.2001 which was registered on 22.05.2001. His further contention is that there was a litigation pending between the father i.e. Shri Deiya and Sumer Singh (son) (respondent-defendant No.1) which shows that they had strained relations and therefore, the second Will could not have been executed in the present form which gave more share to him than the others including the appellant-plaintiffs and respondent-defendant No.2. His further

contention is that the land which has been willed out is an ancestral property and therefore, cannot be said to be self acquired property which is the finding given by the Courts below. His further submission is that the photographs affixed on the earlier Will i.e. 19.05.2001 registered on 22.05.2001, are computerized, whereas, the photographs of Shri Deiya and the witnesses on the subsequent Will dated 22.05.2002 , registered on 23.05.2002, are ordinary photographs and not computerized, when the technologies of computerized photograph was available and was being followed.

I have considered the submissions made by the learned counsel for the appellant-plaintiffs and have gone through the judgments passed by the Courts below with his assistance.

The first objection with regard to the second Will dated 22.05.2002 registered on 23.05.2002 to be a suspicious, forged and fabricated document, cannot be accepted in the light of the fact that Sumer Singh (respondent-defendant No.1) has been able to prove the due execution of the same. The ground for suspicion of the Will which has been taken by the counsel for the appellant-plaintiffs is that the father of the parties, namely, Shri Deiya was not in a correct disposing state of mind as he was suffering from paralysis, is without any basis and cannot be accepted as no evidence has been led by the appellant-plaintiffs which would prove that such a situation was prevalent with regard to the health of Shri Deiya. The assertion that

the property was an ancestral property and therefore, the same could not be willed, also cannot be accepted as there is no evidence led by the appellant-plaintiffs which would support this assertion. The next contention of the learned counsel for the appellant-plaintiffs that the photographs affixed on the Will dated 19.05.2001 registered on 22.05.2001 are not in computerized form and are ordinary photographs, whereas, on the earlier Will, the photographs are computerized, itself cannot be a ground for treating the document to be suspicious specially when the said document has been duly proved. Further, there is nothing provided under the statute that the photograph affixed on the Will has to be computerized and cannot be an ordinary photograph as in the Will dated 22.05.2002 which was registered on 23.05.2002.

Another submission which has been pressed into service by the learned counsel for the appellant-plaintiffs is with regard to the fact that Sumer Singh (respondent-defendant No.1) and their father, namely, Shri Deiya were in litigation with him and therefore, it cannot be said that they have cordial relation which would have persuaded their father to execute a subsequent Will which gave larger share to Sumer Singh (respondent-defendant No.1), also cannot be accepted in the light of the fact that it is the desire and wish of a person to ultimately decide as to who gets what and how much out of his property owned by him. When the execution of the Will dated

22.05.2002 has been proved, it cannot be said that mere pendency of the litigation or earlier litigation, can be a ground for not considering the subsequent Will to be a valid one especially when in the subsequent Will, mention of the earlier Will has been made and the same has been specifically cancelled. It may be added that the second Will dated 22.05.2002 which is a registered Will which factum has been duly proved by Sumer Singh (respondent-defendant No.1) on the basis of cogent and unimpeachable evidence.

Both the Courts below have returned concurrent findings which are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of evidence nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 21, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**