121 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1907 of 2015 (O&M)
Date of Decision: December 15, 2015

Shanti Devi (Deceased) through LRs and another .... Appellants

vs.

Jagdish Lal Khurana and others .... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Tarun Dhingra, Advocate for the appellants.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

CM-5042-C-2015

There is delay of 8 days in refiling the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 8 days in refiling the present appeal is condoned, subject to all just exceptions.

Application stands disposed of.

RSA-1907-2015

The present regular second appeal has been filed against the judgment and decree 24.09.2014 passed by learned Addl. District Judge, Kurukshetra, whereby the appeal filed by the plaintiffs with 77 days delay was found to be time barred. The lower appellate court refused to condone the delay and dismissed the application for condonation of delay as well as the appeal. The said

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appeal was filed against the judgment and decree dated 04.10.2011 passed by learned Addl. Civil Judge (Sr. Divn.), Kurukshtra, vide which the suit of the plaintiffs was partly decreed and partly dismissed to the effect that defendant Nos.2 to 5 were permanently restrained from interfering in the peaceful possession of the plaintiffs over the disputed property. However, it was further held that defendant No.1 being the second class heir of deceased Krishana Kumari shall take specific share in the joint property in due course of law. The parties were left to bear their own costs.

The facts of the case as extracted from the judgment of lower court are that one Krishana Kumari died issueless. Plaintiff No.1 is the real sister of said Krishana Kumari, whereas defendant No.1 is the real brother of said Krishana Kumari. Plaintiff No.2, who is the son of plaintiff No.1 claimed that Krishana Kumari was living with them and she had adopted him when he was only two years old. Necessary ceremonies in this regard were performed. Since then, she was living with them. After her death, defendant no.1 tried to take forcible possession over the suit property and tried to dispossess the plaintiffs.

On the other hand, defendant No.1 claimed that Krishana Kumari executed a Will in favour of defendant No.1, as she was being served by him.

I have heard learned counsel for the appellants and have also carefully gone through the case file.

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The adoption in favour of plaintiff No.2 was denied. The lower court closely scrutinized the evidence and found that there are three matters, which need determination.

1. Adoption.

2. Possession of the disputed house.

3. Will set up by defendant No.1.

The lower court held that the plaintiffs had examined one Ram Kumar, aged about 42 years to prove the adoption. Plaintiff No.2 himself is 35 years old. Therefore, said Ram Kumar was only 7 years of age at the time of alleged adoption. Accordingly, his statement was disbelieved. The self serving statement of Shanti Devi-plaintiff No.1 was also disbelieved by the lower court. The plaintiffs failed to produce any documentary evidence i.e. adoption deed, voter card, ration card, education certificate etc. wherein he might have been recorded as son of Krishana Kumari (deceased) and her husband. Therefore, the oral statement of plaintiff No.1 was rightly discarded by the lower court.

Thus, I concur with the findings of lower court that the plaintiffs failed to prove the adoption of plaintiff No.2 by Krishana Kumari.

Now, coming to the Will (Ex.D1) of defendant No.1, the same was discarded by the lower court on certain grounds mentioned in para No.14 of the judgment. Defendant No.1 did not file any appeal against the adverse findings. The findings qua Will (Ex.D1) has now become final.

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Now, only question left is with regard to the possession, which was determined in favour of the plaintiffs and it was held that the plaintiffs are in possession of the disputed property and cannot be dispossessed except in due course of law. Once, it is found that the findings recorded by the lower court are based on sound reasoning, no ground is made out to interfere in the same. Consequently, notwithstanding the fact that the appeal before the first appellate court has been dismissed on the technical ground of being time barred, I am of the view that since this court has affirmed the findings of the lower court, therefore, there are not merits in the present appeal.

Accordingly, the present regular second appeal stands dismissed.

(KULDIP SINGH)
JUDGE

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