

RSA No. 4378 of 2014 (O&M)

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

RSA No. 4378 of 2014 (O&M)

Date of Decision: November 05, 2015

Sunita

...Appellant

Versus

Hem Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Sanjay Vashisth, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.10137-C of 2014

Prayer in this application is for condonation of delay of 44 days in re-filing the appeal.

It is the contention of the learned counsel for the applicant-appellant that the reason for delay in re-filing the appeal is that initially, the appeal was filed within the limitation on 31.03.2014 but certain objections were raised by the Registry and the case file was returned back. After removing the objections, the appeal was re-filed which has resulted in the delay of 44 days in re-filing the same. The application is duly supported by an affidavit of the applicant-appellant.

For the reasons mentioned in the application, the same is

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allowed. Delay of 44 days in re-filing the appeal, stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Bhiwani, dated 30.04.2011, whereby, the suit of the appellant-plaintiff for a decree of declaration to the effect that the registered Will dated 04.09.2006 (Ex.PW-2/A) executed by Ram Kumar Singh, father of the appellant-plaintiff and contesting respondent-defendant No.1 and proforma respondent-defendant No.2 in favour of Hem Singh-respondent-defendant No.1 is illegal, wrong and based upon the fraud and misrepresentation and that she is entitled to 1/3rd share in the suit property as per the Hindu Succession Act, stands dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the District Judge, Bhiwani, on 03.01.2014.

2. It is the contention of the learned counsel for the appellant that the Will dated 04.09.2006 is shrouded by the suspicious circumstances as the same has been executed on 04.09.2006, merely six days prior to the death of the testator-Ram Kumar Singh, father of the parties. He contends that out of the three attesting witnesses, only one has appeared before the Court in support of the Will and the other two witnesses have not come present. That apart, he contends that since the land is ancestral and was inherited by deceased-Ram Kumar Singh, no Will could have

been executed qua the said property. Contention has, thus, been raised for setting aside the judgments and decree passed by the Courts below and for decreeing the suit of the appellant-plaintiff.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. As regards the first contention of the learned counsel for the appellant that the Will is shrouded with suspicion because of the reason that the same was executed merely six days prior to the death of the testator-Ram Kumar Singh, cannot itself be a ground for giving a finding that it was shrouded by suspicion especially when the respondent-defendant No.1 has been able to prove, on the basis of the evidence, the due execution of the Will which is a registered one. Evidence has come on record clearly establishing the genuineness of the Will. The contention of the learned counsel for the appellant that out of three attesting witnesses, only one has been produced, suffice it to say that as per the Evidence Act, one attesting witness, to prove the Will, is the requirement of law which mandate having been fulfilled, cannot be faulted with. The finding recorded by the Courts below with regard to the genuineness of the Will, therefore, cannot be said to be without any basis.

5. The next contention of the learned counsel for the appellant is that the land in dispute is an ancestral property as the

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same was inherited by deceased-Ram Kumar Singh, who is father of the parties, but a perusal of the judgments passed by the Courts below in which the pleadings and the evidence has been dealt with in detail, shows that the appellant-plaintiff has not been able to establish that the said land was ancestral, rather, it has been proved that most of the land which Ram Kumar Singh got was through the decrees of the Civil Court. Some of the land which was inherited from her mother also would be treated as a self-acquired land as per the settled proposition of law and the statute. The findings, thus, recorded by the Courts below that the appellant-plaintiff has not been able to prove that the land in dispute which is a subject matter of the suit is an ancestral land, cannot be said to be without any basis or illegal.

6. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

7. 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.

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In view of the order passed in the main appeal, the

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present application for staying the operation of the impugned judgments and decree passed by the Courts below, has become infructuous.

Disposed of as such.

November 05, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**