

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

101

Regular Second Appeal No.3316 of 2013 (O&M)
Date of Decision: March 15, 2016

Kulbhushan Bagga (K.K. Bagga)

...Appellant

Versus

Brij Bhushan Bagga and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. D.K. Bhatti, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

CM No.8900-C of 2013

Prayer in this application is for condonation of delay of 21 days in re-filing the appeal.

The reason assigned for the delay is that after the filing of the appeal, Registry had raised certain objections and the paper book was taken back. The case was re-filed after removal of the objections. Thereafter, certain objections were again raised by the Registry and on removal of the same, the case was re-filed, which resulted in the delay of 21 days in re-filing the appeal. The application is supported by the affidavit of the applicant-appellant.

For the reasons mentioned in the application, the same is allowed.

Delay of 21 days in re-filing the appeal stands condoned.

RSA No.3316 of 2013

Challenge in this appeal is to the judgment and decree dated 01.03.2013 passed by the District Judge, Jalandhar, by which the appeal of the respondent-defendant No.1-Brij Bhushan Bagga challenging the judgment and decree dated 02.05.2011 passed by the Civil Judge (Junior Division),

Jalandhar, decreeing the suit of the appellant-plaintiff, has been allowed and the suit of the appellant-plaintiff dismissed.

2. It is the contention of learned counsel for the appellant that the owner of the property was Ram Piari, who is the mother of the appellant-plaintiff and respondent-defendant No.1. She executed a Will dated 26.03.1992 Exhibit DW3/1 according to which the suit property was bequeathed in favour of respondent-defendant No.1-Brij Bhushan Bagga but during her lifetime, she executed another Will dated 13.05.2002 Exhibit P-1, whereby she bequeathed the suit property in favour of the appellant-plaintiff-Kulbhushan Bagga. In the said subsequent Will, it was specifically mentioned that the previous Will dated 26.03.1992 stands revoked. He contends that both the Wills are registered and, therefore, the presumption with regard to the correctness thereof and its due execution arises. He contends that the scribe of the Will namely Dharminder Singh appeared as PW-2 and one of the attesting witnesses namely Harbhajan Singh PW-3 have also proved the due execution of the Will dated 13.05.2002. He contends that the reasons, as has been assigned which renders the subsequent Will dated 13.05.2002 Exhibit P-2 as suspicious, are not sustainable as they are contrary to the records and, therefore, cannot be made the basis for holding that the second Will is not genuine or the same is shrouded with suspicion. He accordingly contends that the impugned judgment and decree dated 01.03.2013 passed by the District Judge, Jalandhar deserves to be set aside and that of the Civil Judge (Junior Division), Jalandhar, deserves to be restored.

3. I have considered the submissions made by learned counsel for the

appellant and with his able assistance have gone through the impugned judgment.

4. The original Will dated 26.03.1992 Exhibit DW3/1 has been admitted by the appellant as in the subsequent Will dated 13.05.2002, the execution of the previous Will has been admitted and has been revoked. That apart, the respondents-defendants have proved the due execution of the previous Will dated 26.03.1992 by producing the scribe and the attesting witness which fact has not been disputed by the counsel for the appellant. The only question with regard to the subsequent Will dated 13.05.2002 is whether the said Will is a genuine one in the light of the facts and circumstances of the present case and the evidence led by the parties. The admitted fact is that the mother of the appellant and respondent-defendant No.1 was residing with respondent-defendant No.1 at Adampur. Off and on, she had been visiting the appellant but as per the Ration Card issued by the Assistant Food and Supply Officer, Adampur which contains her photograph along with the family of respondent-defendant No.1-Brij Bhushan Bagga, it is apparent that she had been staying and residing with respondent-defendant No.1-Brij Bhushan Bagga and his family in H.No.1140, Ward No.5, Adampur, the property in dispute. Possession of the suit property in the hands of respondent-defendant No.1-Brij Bhushan Bagga is not in dispute. It is also not in dispute that the office of the Sub Registrar had been opened in Adampur but the subsequent Will dated 13.05.2002 has been executed and registered at Jalandhar instead of Adampur which goes unexplained. It is not in dispute that at the time of her death, Ram Piari was residing with respondent-defendant No.1Brij Bhushan Bagga at

Adampur and her last rites were also conducted there. Although an assertion has been made by the appellant-plaintiff that he had been taking care of her when she was ill but no evidence has been brought on record which would indicate that he had been taking care of her or that she had been residing with him regularly. It has been admitted that the last rites were performed at Adampur and that too primarily by respondents-defendants. Strangely enough had the plaintiff been visiting the house in dispute to either visit her mother or stay with her, who was a pension holder as her husband was in the Army, he should have known the number of rooms in the house and its valuation. It has been stated by the plaintiff that he had after 10/12 days from the date of cremation of his mother recovered both the Wills i.e. Will dated 26.03.1992 and 13.05.2002 but he had been sleeping over the matter. His mother Ram Piari expired on 27.08.2002 and the present suit has been preferred on 12.05.2006 almost after four years from the date he came to know about the two Wills.

5. Apart from the above suspicious circumstances, there are reasons for doubting the validity of the Will dated 13.05.2002 Exhibit P-2. The attesting witness PW-3 Harbhajan Singh is an utter stranger to the executor of the Will Smt. Ram Piari as he is none other than a milk vendor, who had been supplying milk to the appellant-plaintiff. Nothing has come on record which would show that she had been residing at Jalandhar along with the appellant which would make him familiar with Ram Piari and in any case, an attesting witness is a person who is well known to the executor of the Will. Further it is unnatural for Ram Piari to have deprived respondent-defendant No.1 of his share, especially when she had been residing with him and he had been taking

care of her. The writing of the names and addresses of the witness with a separate ink and the name of the scribe and date of the Will dated 13.05.2002 Exhibit P-2 with separate black ink has rightly been looked with suspicion by the Lower Appellate Court, more so when the rest of the Will is computer typed. The photograph on the Will of Ram Piari is neither initialed nor signed by the authority to validate it. Even the scribe of the Will PW-2 Dharminder Singh has not recorded the substance of the Will in the register Exhibit P-6 maintained by him. There is ample evidence placed on record which would create suspicion in the mind of the Court with regard to the authenticity of the subsequent Will dated 13.05.2002, especially when there is ample evidence on record indicating that Ram Piari had been residing with respondent-defendant No.1-Brij Bhushan Bagga at Adampur and he along with his family had been serving her and getting her treated and incurring expenses on the improvement of the bequeathed property. The findings as recorded by the Lower Appellate Court, therefore, cannot be faulted with as the propounder of the Will not only have to prove the due execution of the Will but to clear the clouds of suspicion, if any, cast around the so propounded Will, as in this case, the subsequent Will dated 13.05.2002 which onus the appellant-plaintiff has failed to discharge.

6. No other point has been raised or argued by the counsel for the appellant.

7. The findings as returned by the Lower Appellate Court being in accordance with law and on due appreciation, pleadings and evidence brought on record, do not call for any interference. There is no illegality in the judgment impugned.

8. No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay

i.e. CM No.8901-C of 2013, stands disposed of as infructuous.

March 15, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**