

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

RSA No.1728 of 2016 (O&M)

Date of decision : 04.10.2016

Swaran Chand and others

...Appellants

Versus

Sadhu Ram (deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Balram Singh, Advocate for the appellants.

AMIT RAWAL, J. (Oral)

CM No.4735-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 17 days in filing the present appeal is condoned.

Application stands allowed.

Main Case

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby claim in the suit seeking declaration to the effect that plaintiffs have become owner of the suit property on the basis of registered Will dated 28.03.1988, has been dismissed by both the Courts below.

Mr. Balram Singh, learned counsel appearing on behalf of

appellants-plaintiffs submits that respondents in pursuance to the aforementioned suit set up unregistered Will dated 10.07.1991 whereas registered Will carries presumption of truth which has been proved through the testimony of the attesting witnesses. Courts below have erroneously declined and discarded the relief on the premise that appellants-plaintiffs had participated but none of the witness had indicated such fact. The mind of the testator has to be seen from the recital of the Will, wherein Tapia Ram the father had already indicated that he had already given the property to his two other sons. It is in this backdrop of the matter, suit was filed but the Courts below declined the relief as sought for and thus urges this Court for setting aside of the judgment and decree under challenge.

I have learned counsel for the appellants-plaintiffs and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Balram Singh, for, it is matter of record that appellants-plaintiffs had earlier filed the simplicitor suit for injunction on 23.07.1998 but did not propound the Will, aforementioned. Had it been so, he could have set up such plea. There is also evidence to the effect that he had participated. The actual participation though does not dispel the suspicious circumstances, but since dispute is amongst the brothers, it cannot be ruled out. Will dated 10.07.1991 is unregistered. Property of common ancestral devolves upon all his sons in equal shares.

In my view, the appellants-plaintiffs wanted to grab more share than what other brother has allegedly been granted but no evidence has been led. Had it been so, perhaps the contents/recital of the Will would have been proved.

For the reasons aforementioned, I do not intend to differ with the findings rendered by both the Courts below.

No ground for interference is made out, much less, no substantial question of law arises for determination.

Accordingly, present appeal is dismissed.

04.10.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No