

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

**RSA No. 4867 of 2013 (O&M)  
Date of decision: 11.04.2016**

Virsa Singh

...Appellant(s)

Versus

Narinder Singh and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

1. Whether Reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. K.S. Dhillon, Advocate for the appellant.

**JITENDRA CHAUHAN, J.**

**CM-13124-C-2013**

This is an application for condonation of delay of 52 days in re-filing the appeal. It is averred that the appeal was filed within limitation i.e. on 11.04.2013, but the same was returned with objections on 01.05.2013. The same was re-filed but again returned for removing objections on 23.07.2013 and 12.09.2013. Thereafter, the appeal was misplaced in the office of the counsel and due to the same, a delay of 52 days has occurred in re-filing the appeal.

Keeping in view the averments made in the application

and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 52 days in refiling the present appeal is hereby condoned subject to all just exceptions.

**Main case**

The challenge in the present second appeal is to the judgments and decrees dated 28.10.2010 and 19.01.2013, passed by the Courts below, whereby, the suit of the plaintiff-appellant for declaration with consequential relief of permanent injunction and in the alternate, for joint possession of the property in dispute, was dismissed.

It is the case of the plaintiff-appellant that plaintiff and defendant No.1 are real brothers, whereas, defendant Nos.2 and 3 are real sisters and defendant Nos.4 to 6 are the sons of their deceased sister, Kanwaljit Kaur. One Mangal Singh, the predecessor-in-interest of both the parties was joint owner in possession of land measuring 192 kanals 02 marlas along with plaintiff and defendant No.1. The property in dispute was ancestral and joint family property. Said Mangal Singh died on October 1, 2001 and defendant Nos.2 and 3 and Kanwaljit Kaur (deceased sister) were already married 35/40 years back. It is

further averred that there was a family settlement between the parties in the year 1980-82, according to which the plaintiff became co-owner to the extent of 1/3<sup>rd</sup> share. In the year 1997, the share of Mangal Singh was given on lease to the plaintiff at the rate of Rs.3,500/- per killa and the remaining land was given to defendant No.1. During his lifetime, Mangal Singh executed a valid Will dated September 29, 2001, in his sound disposing mind according to which, 2/3<sup>rd</sup> share out of the entire estate came to the share of the plaintiff, meaning thereby, that the plaintiff became owner to the extent of 128 kanals 14 marlas out of the total land. To the contrary, defendant No.1 has alleged that in fact Mangal Singh executed a Will (Ex.P1) in his favour, is a forged and fabricated document and a result of impersonation and fraud.

Defendant Nos.7 to 13 opted not to appear before the trial Court and were proceeded ex parte.

Defendant Nos.1 to 6 and 14 contested the suit by filing separate written statements controverting the stand taken by the plaintiff.

It is the case of defendant Nos.1 to 6 that Mangal Singh had executed a registered Will dated September 28, 2001, in his sound disposing mind regarding land measuring 93 kanals 16

marlas and mutation regarding the remaining land has been sanctioned in the names of natural heirs. The plaintiff had already filed an application for correction of khasra girdawari which was dismissed by Assistant Collector, Second Grade, Patti. Will dated September 29, 2001, allegedly executed in favour of the plaintiff was stated to be the result of coercion. The defendants denied the family settlement pleaded by the plaintiff and prayed for dismissal of the suit.

In its written statement, defendant No.14 has also controverted the contentions of the plaintiff.

I have heard learned counsel for the appellant and perused the case file carefully.

Learned counsel for the appellant contends that the registered Will dated September 28, 2001 (Ex.D1) was never executed by Mangal Singh and the same has been erroneously relied upon by the Courts below. The Will dated September 29, 2001 (Ex.P1), propounded by the appellant has been wrongly discarded. Will, Ex.P1, was the latest and last Will of the testator and it cannot be ignored only on the premise that it is an unregistered Will. No evidence, whatsoever, has been led by the defendants to prove that Will, Ex.P1, is bogus one.

The arguments advanced on behalf of the appellant are not tenable. The controversy in hand hinges around two separate Wills, one being propounded by the plaintiff-appellant i.e. Will, Ex.P1, alleged to have been executed by Mangal Singh on September 29, 2001 and another Will, Ex.D1, propounded by the defendant-respondents, allegedly executed by Mangal Singh on September 28, 2001. Will Ex.P1 is an unregistered document, whereas, Will, Ex.D1, is a duly registered document. While explaining the significance of a registered document, Hon'ble the apex Court, in ***Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana, 2010(1) R.C.R. (Civil) 46***, has held as under:-

*“Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the*

*nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property.”*

Although, the Will propounded by the plaintiff-appellant, i.e. Ex.P1 cannot be discarded solely on the ground that it remained unregistered, but in the light of the fact that Will, Ex.D1, relied upon by the defendant-respondents is duly registered, the onus shifts on the latter. However, the plaintiff/appellant has miserably failed to discharge his burden.

Will, Ex.P1, is surrounded by suspicious circumstances, viz., Will Ex.P1 saw the light of the day after about one year and the line spacing is also irregular, whereas, registered Will, Ex.D1, has been duly proved on record. It is established on record that respondent-defendant No.1 has been cultivating land since the lifetime of deceased-Mangal Singh and he is in possession of the land alleged to be bequeathed in his favour by way of Will, Ex.D1.

It is further established from the oral as well as documentary evidence on record that deceased Mangal Singh was residing with respondent-defendant No.1. All these circumstances unerringly point in favour of registered Will, Ex.D1.

The learned counsel for the appellant has failed to point out any illegality or perversity with regard to the concurrent finding of fact recorded by the learned Courts below, which may warrant interference by this Court.

No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

**11.04.2016**

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**( JITENDRA CHAUHAN )  
JUDGE**