

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

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Regular Second Appeal No.294 of 2015 (O&M)  
Date of Decision: January 14, 2016

Bhajan Singh and others

...Appellants

Versus

Kulwant Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Harsh Bunger, Advocate  
for the applicants-appellants.

**AUGUSTINE GEORGE MASIH, J. (ORAL)**

**CM No.777-C of 2015**

Prayer in this application is for condonation of delay of 612 days in re-filing the appeal.

It has been stated in the application that the present appeal was filed within limitation. Certain objections were raised by the Registry and the Clerk of the counsel for applicants-appellants collected the same and by mistake wrongly placed the case file in different case because of which the same could not be traced. After great difficulty, the said file was traced and the appeal after removal of the objections, re-filed which has resulted in a delay of 612 days in re-filing the same.

Counsel for the applicants-appellants states that the delay in re-filing the appeal was not deliberate or intentional nor any benefit has been derived because of the delay. He prays for the present application to be allowed.

On considering the submissions made by learned counsel for

the applicants-appellants and keeping in view of the affidavit which has been filed of the Clerk of the counsel, the present application is allowed.

Delay of 612 days in re-filing the appeal stands condoned.

**CM No.778-C of 2015**

Prayer in this application is for permission to place on record Annexures P-1 to P-3.

Application is allowed subject to just exceptions.

Annexure P-1 to P-3 are taken on record.

**CM No.779-C of 2015**

Prayer in this application is for exemption from filing the certified copy of judgment and decree dated 23.02.2001 passed by the Court of learned Civil Judge (Junior Division), Phillaur; grounds of appeal before the learned District Judge, Jalandhar and Annexures P-1 and P-2 and for permission to file true typed copies of the same.

Application is allowed subject to just exceptions.

True typed copies of above said documents are taken on record.

**RSA No.294 of 2015**

Challenge in this appeal is to the judgment and decree dated 23.02.2001 passed by the Civil Judge (Junior Division), Phillaur, whereby the suit filed by the appellants-plaintiffs for declaration with consequential relief of permanent injunction, has been dismissed, appeal against which preferred by the appellants-plaintiffs dismissed by the District Judge, Jalandhar, on 23.10.2012.

2. It is the contention of learned counsel for the appellants that

after the passing of the decree dated 23.02.2001, an appeal was preferred which was allowed by order dated 23.09.2004 (Annexure P-1) and the matter was remanded to the trial Court to decide afresh by framing an additional issue i.e. 'whether the Will dated 15.04.1993 has been executed by Puran Singh? OPD'. This order was challenged by the respondent No.14/defendant No.14-Kewal Singh before this Court by filing SAO No.70 of 2004. The said appeal was allowed and the matter was directed to be decided by the District Judge, Jalandhar, by obtaining the report of the trial Court on the additional issue which was framed by the Lower Appellate Court. Before the trial Court, no evidence was led by the respondents-defendants in support of the said issue. The appellants-plaintiffs also chose not to lead any evidence. On the basis of the report which has been returned by the trial Court, the Lower Appellate Court has proceeded to decide the case on merits afresh.

3. Counsel for the appellants contends that in the light of the evidence which is on record, the learned Lower Appellate Court had earlier returned a finding and remanded the case to the trial Court for fresh decision on merits by framing an additional issue. He, therefore, contends that the said finding clearly establishes that there is nothing on the record which could be termed as evidence dealing with the validity/execution of the Will dated 15.04.1993. He, therefore, contends that the findings, as has now been recorded by the Court below with regard to the validity and due execution of the Will dated 15.04.1993 Exhibit DW2/A, cannot sustain. He contends that in the absence of any evidence led by the respondents-defendants with regard to the additional issue, the judgment

itself is erroneous and deserves to be set aside. Counsel contends that the findings recorded with regard to suspicion and, therefore, discarding the registered Will dated 11.04.1988 by the Courts below, cannot sustain and the said finding also deserves to be set aside. He, accordingly, prays that the impugned judgments and decree deserve to be set aside and the suit of the appellants-plaintiffs decreed.

4. I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not find any ground which would call for any interference by this Court.

5. Although the learned Lower Appellate Court has proceeded to return a finding with regard to the due execution of the registered Will dated 11.04.1988 Exhibit P-1 but even if the same is found to be a genuine one, it is not disputed that the subsequent Will dated 15.04.1993 Exhibit DW2/A, although unregistered Will prevail provided its genuineness is duly proved in the form of due execution by deceased Puran Singh, the executor of both the Wills. If that be so, the first aspect which needs to be looked into is with regard to the evidence which has been led by the parties to that effect. To prove the Will dated 15.04.1993, the respondents-defendants have examined DW-2 Thakur Singh, who is the attesting witness of the Will as also scribe of the Will Raj Gopal DW-3. The statement given by Thakur Singh clearly establishes the due execution of the Will as nothing has come out in his cross-examination which would shake his evidence or cast any doubt. Similarly the scribe of the Will Ram Gopal DW-3 has proved with regard to the execution of the Will. He has not only scribed the Will but the

contents thereof have been copied and find mention in the register maintained by him. These two witnesses proved the due execution of the Will dated 15.04.1993 Exhibit DW2/A.

6. Counsel for the appellants asserts that the said Will is shrouded with suspicion as there is no mention of the earlier Will dated 11.04.1988 which is a registered one.

7. Even if that be so, after the due execution of the Will having been proved, that would not in itself be a ground for discarding the evidence led by the respondents-defendants with regard to the validity of the Will, specially when nothing has come out in the evidence which would indicate such a suspicious circumstance as would persuade this Court to cast doubt about the due execution or its authenticity. The findings, thus, recorded by the Court with regard to the due execution of the Will dated 18.04.1993, cannot be interfered with.

8. As regards the contention of learned counsel for the appellants that the entire evidence was available with the Lower Appellate Court when the additional issue was framed but still the Court proceeded to remand the case, suffice it to say that the said evidence which has been led before the trial Court when the case was remanded for inquiry as per the order passed by the High Court, the said evidence clearly shows that the parties were aware that the execution and validity of the second Will dated 18.04.1993 Exhibit DW2/A was always an issue before the parties as per the pleadings and the evidence, as has been discussed by the Court below clearly points to the same effect that the parties lead their evidence in this regard and thus was available on record proving the genuineness of the second Will

and its due execution.

9. Counsel for the appellants also put forth a plea with regard to the mental state of the testator as it has come in evidence of the parties that the testator of the Will Puran Singh was of the age of 90 years as in 1993 when the Will was executed but this assertion cannot be accepted in the light of the fact that the witnesses, who had appeared have clearly stated that he was in a sound disposing mind and there is no evidence to the contrary placed on record with regard to the mental status of Puran Singh except by asserting that he died after ten days of execution of the Will dated 18.04.1993.

10. It may be added here that after the execution of the Will dated 15.04.1993, mutation was sanctioned on the basis of the said Will and during those proceedings, statements were recorded of Joginder Singh son of Puran Singh on 31.12.1993, Palo wife of Gurdev Singh dated 31.12.1993 and Gian Singh son of Puran Singh. These witnesses, who had appeared before the Sub Divisional Magistrate, Phillaur, had stated with regard to the genuineness of the Will and consented to the mutation on the basis of the said Will. It would not be out of way to mention here that Sarwan Singh is none else than the attesting witness of the registered Will dated 11.04.1988 Exhibit P-1 of whom the beneficiary is his own son Gulwinder Singh, who is appellant No.3 before this Court. This also shows that the Will had been properly executed, propounded and genuine.

11. A plea has been taken that an application for additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908, was filed by the appellants-plaintiffs before the Lower Appellate Court for

leading additional evidence to prove the thumb impression of deceased Puran Singh on the sale deeds dated 17.04.1984, 11.01.1982 and 27.04.1981 which application has been decided along with the appeal by dismissing the same and, therefore, the said procedure as adopted by the Lower Appellate Court is not permissible as this has denied the appellants-plaintiffs an opportunity to challenge the said order.

12. This contention of learned counsel for the appellants cannot be accepted as it has not been disputed by the counsel that the order of dismissal of the application for additional evidence can be challenged in the appeal along with the main judgment and in fact, has been challenged in the present appeal as well. Now considering the rejection of the application for additional evidence as filed by the appellants-defendants, the said application was filed to prove the thumb impression of Puran Singh on the sale deeds which are spanning between the period 1981 to 1984. The Lower Appellate Court has rightly rejected the application on the ground that there were ample opportunities granted to the parties to lead evidence when the case was sent before the trial Court for inquiry on the additional issue which was framed. Merely because the respondents-defendants had chosen not to lead any evidence before the trial Court does not mean that the appellants-plaintiffs could not lead their evidence. They having failed to do so despite various opportunities having been granted by the trial Court and that these documents i.e. the sale deeds were in the knowledge of the appellants and were available with them at that stage as well, the application has rightly been rejected on the ground that they did not take due diligence and had not been conscious enough to prosecute their case at the appropriate stage of the

case. The dismissal of the application by the Lower Appellate Court is correct in law which do not call for interference by this Court.

13. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

14. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

**January 14, 2016**  
*Puneet*

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**