

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

**RSA No.785 of 2016 (O&M)
Date of decision:12.05.2016**

Charanjeet Singh

... Appellant

Vs.

Mohinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sandeep Arora, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.2135-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 05 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.2136-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 153 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.785 of 2016 (O&M)

Appellant-plaintiff is aggrieved of the dismissal of the suit claiming right in the property on the basis of the Will dated 16.03.1993. Defendants had also set up a Will dated 09.09.2003.

Both the Courts below discarded the Wills on the ground that requirement of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act, has not been complied with.

Mr. Sandeep Arora, learned counsel appearing on behalf of the appellant-plaintiff submits that during the appellate stage, an application under Order 41 Rule 27 of the Code of Civil Procedure seeking the indulgence of the Court for examining the witnesses by way of secondary evidence was moved which has erroneously been dismissed. The appellant was not aware of the intricacies of the law as he was ill advised resulting into dismissal of the suit. He further submits that impugned judgment and decree of the Lower Appellate Court and as well as, order declining the application for additional evidence, are not sustainable in the eyes of law as there is illegality and perversity in the findings.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that plaintiff has lost the occasion to lead the evidence at the stage of leading affirmative evidence. Allowing of the application would tantamount to unsettling the settled controversy. Even Will set up by the defendants has also been disbelieved. Whatever was in existence before filing of the suit is still continuing. Allowing of the application would amount de novo of the trial and filling up of lacunae as the other party had got the advantage of the same. Such practice on the part of the appellant-plaintiff during the Regular Second

Appeal should be discouraged.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 12, 2016
savita