

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

RSA No.5871 of 2015 (O&M)

Date of Decision.02.12.2016

Suninder Singh

.....Appellant

Vs

Kuldip Kaur and others

.....Respondents

Present: Mr. HPS Ghuman, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.14625-C of 2015

For the reasons stated in the application, delay of 40 days in
refiling the appeal is condoned.

Application is allowed.

RSA No.5871 of 2015

The appellant-defendant No.1 is aggrieved of the concurrent
finding of fact whereby the suit filed by the respondents-plaintiffs seeking
relief of declaration that they are owners in possession to the extent of 1/3rd
share in house No.2520, Sector 22-C, Chandigarh and restraint against the
defendants from interfering into the possession of plaintiff No.1 over the
first floor of the house in question, has been decreed by both the Courts
below.

Mr. Ghuman, learned counsel appearing for the appellant-
defendant No.1 submits that the respondents-plaintiffs challenged the Will
and therefore, the onus to prove the execution and attestation/forgery was
on the respondents-plaintiffs. Having failed to do so, the Courts below have

erroneously laid burden upon the appellants-defendants. Even one of the

attesting witness examined deposed in terms of the provisions of Section 63 (c) of the Indian Succession Act and provisions of Section 68 of the Indian Evidence Act also complied with but the Courts below have failed to notice the aforementioned fact and therefore, there is gross illegality and perversity. Before the lower Appellate Court, an application for additional evidence for examining the other witness was also moved but the the same has erroneously been dismissed.

I have heard learned counsel for the appellant and appraised the paper book. Moving of the application at the appellate stage is nothing but an attempt to fill up the lacuna as valuable right had accrued in favour of the respondent-plaintiff, rightly so, the same has been declined. I do not deem it appropriate to accept the oral request of Mr. Ghuman to allow the aforementioned application, for, no such application in the present appeal has been filed.

As regards the other aspect, the argument of Mr. Ghuman is totally misconceived and fallacious as the onus is always on the person who propounds the Will. Will has been set up by the defendants-appellants and therefore, they were required to prove the execution and then onus would have passed on the plaintiffs in rebuttal. Having failed to discharge the onus, the plaintiffs should not have rebutted the same. Attesting witness has not deposed in terms of provisions of Section 63(c) of the Indian Succession Act and there is not even a single whisper qua attestation of the Will/appending of the signatures on the instructions of the testator, which is statutory requirement of law.

For the reasons aforementioned, I do not intend to differ with the finding rendered by the Courts below as the same are based upon correct

appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

December 02, 2016

Pankaj*

(AMIT RAWAL)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No