

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

RSA No. 6177 of 2015(O&M)

Date of decision: 07.04.2016

Ranjit Singh

...Appellant(s)

Versus

Ninder Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. P.K. Kataria, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

CM No. 15504-C-2015

This is an application for condonation of delay of 3 days in re-filing the appeal. It is averred that the appeal was filed on 18.9.2015 within limitation but the same was returned with objections on 26.9.2015. The appellant after removing the objections re-filed the appeal within time on 28.10.2015 but again the same has been returned with objections dated 5.12.2015. The appeal was again filed on 15.12.2015 but the same was returned with objection that there was delay of 2 days in re-filing.

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 3 days in refiling the present appeal is hereby condoned subject to all just exceptions.

Main case

This regular second appeal has been filed by defendant No. 1, Ranjit Singh, against the judgment and decree dated 20.07.2015, passed by Additional District Judge, Tarn Taran; and the judgment and decree dated 16.03.2013, passed by Civil Judge (Junior Division), Patti.

In brief, the plaintiffs filed suit for declaration and permanent injunction. It was pleaded by the plaintiffs that the land measuring 27 kanals 12 marlas as mentioned in the plaint was originally owned and possessed by Gian Singh. It was further averred that Gian Singh had since died and after his death his estate had devolved upon defendant No. 2, Gurdev Singh and defendant No. 3, Angrej Singh, plaintiff No. 1, being sons and Palo, Jagiro, Lakho, Ranjit Kaur alias Rajvinder Kaur plaintiffs No. 2 to 5 being daughters in equal shares as such the plaintiffs No. 1 to 5 and defendants no. 1 to 3 had inherited 1/7th share each out of the estate of Gian Singh. It was further averred that

defendant No. 1 is son of defendant No. 2 and nephew of defendant No. 3. The defendants No. 2 and 3 are co-brothers and wives of defendants No. 2 and 3 are sisters. The defendant no. 1 alleged that he had got some Will executed in his favour from Gian Singh son of Fateh Singh which was not admitted by the plaintiff. Execution, validity and existence of alleged Will was specifically denied. It was further averred that firstly no such Will was ever executed by Gian Singh in favour of defendant No. 1. If still the same was proved or produced on record, it was not admitted by the plaintiffs. The defendants No. 1 to 3 had got no right, title or interest in the suit land. The defendants no. 1 to 3 being high headed persons had been threatening to alienate the suit land in favour of some other persons though they have no right to do so. The defendant no. 4-Bank had alleged that part of the suit land was under mortgage with it, as such, it had been joined as defendant in the suit to avoid any controversy at a later stage. The request of the plaintiffs failed to yield any result. Hence the suit.

Upon notice, the defendants no. 1 to 3 appeared and filed written statement. It was pleaded by the defendants that Fateh Singh, who was father of Gian Singh, had executed a registered Will dated 08.12.1986 in favour of his grand sons and whole of this suit land was purchased by Gian Singh himself and in his Will

dated 23.11.2004, registered on 27.11.2006 he had recited that he had got the marriages of his daughter arranged and had given sufficient dowry and they were residing at their matrimonial houses happily. It was further averred that plaintiffs no. 2 to 5 had filed the present suit at the instigation of Ninder Singh who had been living separately from Gian Singh since 1998, whereas, Gurdev Singh alias Baldev Singh and Angrej Singh sons of Gian Singh had been living with Gian Singh and he was being served by them. It was further averred that inheritance of Fateh Singh, father of Gian Singh, had been sanctioned in favour of his grand sons out of them sons of Dhian Singh have already sold land which was inherited by them from Fateh Singh. It was further averred that defendant no. 1 had been recorded in possession of the suit land and the plaintiffs had no right or interest in the suit land.

After appraisal of the evidence, the learned trial Court decreed the suit of the plaintiffs. The plaintiffs were declared to be the owners in possession qua the share of Gian Singh, son of Fateh Singh to the extent of 5/7th share of land measuring 27 Kanals 12 Marlas as detailed in the head note of the plaint.

Feeling dissatisfied, the defendants no. 1 to 3 filed an appeal before Additional District Judge, Tarn Taran. The lower Appellate Court dismissed the appeal. Consequently, the present

regular second appeal at the behest of the defendant No. 1.

On behalf of the appellant, it is contended that no specific plea of suspicious circumstance has been taken by the plaintiffs in their pleadings. It is further contended that the signatures of the attesting witnesses are not required to be on the same time or same day. The plaintiffs have simply taken the plea that the Will was illegal, null and void and has been prepared in connivance with the scribe. The plaintiffs have failed to prove that the Will was forged one.

I have heard the learned counsel for the appellant and gone through the case file.

There is a concurrent finding of fact recorded by both the Courts below that the execution of the alleged Will has not been proved by the defendants. The arguments of the learned counsel for the appellant that the plaintiffs ought to have taken specific plea regarding the non-execution of the Will, pales into insignificance inasmuch as the propounder of the Will has to prove the execution of the same. The onus did not lie upon the plaintiffs rather it was the defendants who were to prove on record by bringing clinching evidence that the Will was genuine. The plaintiffs claimed their share on the basis of natural succession whereas, the defendants claimed that the entire suit property has

been bequeathed by deceased Gian Singh in favour of Ranjit Singh, defendant No. 1 by way of Will dated 23.11.2006. There is a finding of fact that the Will has not been proved on record. As per Section 68 of the Evidence Act, one attesting witness is required to be examined to prove the execution of the Will. The defendants have failed to examine any attesting witness to prove the Will. Further, the Will was found to be surrounded with suspicious circumstances. There was a cutting of date on the Will. The *Wasika Nawis* could not prove the execution of the Will. Such being the findings of fact, this Court does not find any reason to interfere in the findings recorded by both the Courts below. Otherwise also, the arguments raised relate to the question of fact only. No question of law much less substantial question of law is involved in the present regular second appeal.

Dismissed in limine.

07.04.2016
SN

(JITENDRA CHAUHAN)
JUDGE