

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

RSA No. 4260 of 2014 (O&M)

Date of Decision: 02.05.2016

Shahnazbir Singh alias Mohinder Singh

..... Appellant

Versus

Ranbir Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. Sandeep Kumar, Advocate for
Mr. J.S. Toor, Advocate,
for the appellant.

Jitendra Chauhan, J.

CM- 9869-C-2014

This is an application for condonation of delay of 871 days in refiling the appeal. It is averred that the appeal was filed on 9.12.2011 within limitation but the same was returned with objections on 19.12.2011. The appellant after removing the objections re-filed the appeal on 2.6.2014 but again the same has been returned with objections. The appeal was again filed on 24.7.2014.

Keeping in view the averments made in the application, the accompanying affidavit, and the fact that the objections were technical in nature, there appears to be sufficient cause for allowing the same. The delay of 871 days in refiling the present appeal is

hereby condoned subject to all just exceptions. CM is allowed as prayed for.

Main case

This regular second appeal has been filed by the plaintiff against the judgment and decree dated 27.01.2006, passed by Civil Judge (Junior Division), Ludhiana (for short 'the trial Court') and; the judgment and decree dated 23.8.2011, passed by Additional District Judge, Ludhiana (for short 'the Lower Appellate Court').

In brief, the plaintiff filed a suit for possession and permanent injunction. The pleaded case of the plaintiff is that originally, the suit property was owned by Pooran Singh. Thereafter, the property was inherited by Nagina Singh. After the death of Nagina Singh, Jagir Singh became the owner of the property. Jagir Singh married to Gurdial Kaur. Out of the wedlock, one son i.e. Iqbal Singh, plaintiff and two daughters i.e. defendant no. 2 and defendant no.3 were born. During his life-time, Jagir Singh executed a Will in favour of the plaintiff, Shahnazbir Singh, on 14.08.1989. On the basis of that Will, the plaintiff became the owner of the suit land. The land is joint Hindu ancestral co-parcenary property. The parties are governed by Mitakshara School of Hindu Law. Jagir Singh died on 18.08.1989. The Will was executed by Jagir Singh in favour of the plaintiff on account of the services rendered by the plaintiff to the deceased. When the plaintiff approached the Revenue authorities for sanctioning the mutation on the basis of aforesaid Will, he came to know that the estate

of Jagir Singh was mutated in favour of the defendant no. 1 on 30.08.1989. The plaintiff further came to know that defendant no. 1 had obtained a collusive decree from deceased-Jagir Singh. On the basis of the Will and collusive decree, the defendant no. 1 had sold some part of the suit land in favour of the defendants no. 3 and 5 vide sale deeds dated 19.02.1991, 11.03.1991 and 09.04.1991.

The plaintiff challenged all the aforesaid documents i.e. the Will executed by deceased Jagir Singh in favour of the defendant no. 1, the collusive decree and the subsequent sale deeds executed by defendant no. 1 in favour of defendants no. 7 and 8.

Upon notice, the defendants appeared and filed the written statement. It was asserted that Iqbal Singh, father of the plaintiff was not having cordial relation with the deceased-Jagir Singh. So, Jagir Singh separated Iqbal Singh after giving him 20 acres of land alongwith one car, tractor and house articles at the time of separation. Iqbal Singh started living at Chandigarh. Therefore, the land is neither ancestral nor Joint Hindu family property. Since, the father of the plaintiff was not on visiting terms with Jagir Singh, therefore, the question of executing Will in favour of the plaintiff i.e. grandson of Jagir Singh did not arise. Iqbal Singh, even did not attend the last rites or the bhog ceremony of Jagir Singh or his son-in-law, Harmel Singh. The land is self-acquired property of Jagir Singh because Iqbal Singh separated himself from Jagir Singh. In fact, deceased Jagir Singh had

executed a Will dated 14.08.1957 in favour of his wife-Gurdial Kaur

and on the basis of that Will, the defendant no. 1 i.e. Gurdial Kaur had sold some part of the suit land vide sale deed dated 19.02.1991, 09.04.1991 and 11.03.1991.

After appraisal of the evidence, the learned trial Court dismissed the suit of the plaintiff holding that the Will set up by the plaintiff was not proved in accordance with the provisions of Section 68 of the Indian Evidence Act. Further, the Will executed in favour of Gurdial Kaur-defendant no. 1 was proved by one of its attesting witness, Raghbir Singh.

Feeling dissatisfied, the plaintiff filed an appeal before Additional District Judge, Ludhiana which came to be dismissed vide judgment and decree dated 23.08.2011. Hence, the present Regular Second Appeal at the behest of the plaintiff.

On behalf of the appellant, it is contended that the Will dated 14.8.1989, executed by Jagir Singh in favour of the plaintiff has been well proved on the record. It is further contended that since the nature of the property in hands of Jagir Singh was ancestral, he was not competent to execute the Will dated 14.08.1957 in favour of his wife-Gurdial Kaur. The plaintiff being the grandson of Jagir Singh had pre-existing right in the suit property which the deceased-Jagir Singh could not have denied to him. Since the deceased was not competent to execute the Will in favour of his wife, therefore, the subsequent sale deeds executed by defendant no. 1 in favour of defendants no. 3 and 5

are also liable to be set aside.

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

The question of execution of Will in favour of the plaintiff has been rightly decided by the Courts below by observing that the Will dated 14.08.1989 was not proved in accordance with the law. The plaintiff did not examine any of the attesting witnesses to the Will. Further, the Will was surrounded by suspicious circumstances as the Will was executed on 14.08.1989 and the deceased died on 18.08.1989 i.e. four days after execution of the alleged Will. This finding of fact cannot be interfered with by this Court in the Regular Second Appeal. Another point raised by the learned counsel for the appellant that since the suit property was ancestral in the hands of Jagir Singh, so he was not competent to execute the Will in favour of defendant no. 1, also pales into insignificance inasmuch as originally, the property was owned by Buta Singh, thereafter the property came in the hands of Pooran Singh. Nagina Singh obtained the property from Pooran Singh. Nagina Singh gifted the property to his wife-Harbant Kaur. Harbant Kaur gifted the suit land to her son-Jagir Singh, the owner of the suit property. In the hands of Jagir Singh, it became his self-acquired property as the property was not obtained from father, father's father, father's father's father. It is well settled law that if the property does not come from the four lineal ascendants, its nature is not that of ancestral, rather, it acquires the nature of self-acquired property in the hands of the recipient. Otherwise also, it was Jagir Singh who could lay

challenge to the gift made by Nagina Singh to Harbant Kaur. Once during the life-time of Jagir Singh, he did not challenge the execution of gift, it does not lie in the mouth of the plaintiff to challenge the competency of Jagir Singh in the present suit. There is a concurrent finding of fact recorded by both the Courts below that the Will executed in favour of the defendant no. 1 has been proved to be genuine. The attesting witness, Raghubir Singh has proved that Jagir Singh during his lifetime executed the Will in favour of his wife-Gurdial Kaur. This Court while deciding the Regular Second Appeal is precluded from interfering in the concurrent finding of fact recorded by both the Courts below. There is no substantial question of law involved in the present Regular Second Appeal.

Consequently, the appeal is dismissed.

02.05.2016
SN

(JITENDRA CHAUHAN)
JUDGE