

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5701 of 2014 (O&M)
Date of decision : January 11, 2016

Rachpal Singh and others

..... Appellants

Versus

Kamaldeep Singh and others

..... Respondents

RSA No. 212 of 2015 (O&M)

Rachpal Singh and others

..... Appellants

Versus

Kamaldeep Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr.Vijay Lath, Advocate
for the appellants.**

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

Amit Rawal, J (oral).

CM No.551-C of 2015 in RSA No. 212 of 2015

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 82 days in refiling the appeal is condoned.

The application stands disposed of.

CM No.552-C of 2015 in RSA No. 212 of 2015

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 12 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 5701 of 2014 and 212 of 2015

This order of mine shall dispose of the aforementioned two appeals as common question of law arise for determination.

The appellant-defendant No.3 is in Regular Second Appeal against the concurrent finding of fact whereby the suit filed by the respondents-plaintiffs and appellants-defendants has been dismissed.

Mr. Vijay Lath, learned counsel appearing on behalf of the appellant-defendant submits that both the courts below have committed illegality and perversity in not referring to the statement of scribe and witness of the Will dated 7.5.2001 whereas the Will set up by the respondents-plaintiffs dated 2.5.2001 has actually been found to be executed at dhaba.

The appellants-defendants served Avtar Singh who was unmarried through out his life time. The Will prima facie has been proved in accordance with law, much less the provisions of Section 68 of Indian Evidence Act, 1872 and Section 63-C of the Hindu Succession Act, 1956 had been complied with.

I have heard learned counsel for the appellant and appraised the paper book.

It is a matter of record that the respondents-plaintiffs have also set up a Will dated 2.5.2001 alleged to have been executed by Avtar Singh and filed an appeal against the rejection of the Will which has attained finality as no Regular Second Appeal has yet been filed. In essence, they have accepted the finding rendered by both the courts below.

Both the courts below have arrived at a concurrent finding of fact that the Will dated 7.5.2001 set up by the appellants-defendants has not been proved in accordance with law.

There is another aspect of the matter that the defendants had propounded the Will dated 22.2.2000. The manner and circumstance as to how the said Will had been cancelled by Avtar Singh, has not come forward or explained as to the fact that Avtar Singh was happy with the services rendered by the defendants in executing the Will dated 7.5.2001 in their favour. The Will dated 7.5.2001 does not mention that Avtar Singh became happy after cancellation of the previous Will. This fact has created a suspicion which has not been removed by defendant No.3. Even the lower appellate court found that there has been inter spacing in the Will dated 7.5.2001 and which fact was admitted by Pawan Kumar, deed writer. It appears that blank paper having thumb impression of Avtar Singh, have been used. Thus, the Wills set up by the plaintiffs and defendants were surrounded by suspicious circumstances. In the absence of any Wills, all the parties are entitled to succeed to the

estate of Avtar Singh under the Hindu Succession Act, 1956 being class-II heirs.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeals are devoid of merits, accordingly, the same are dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2016
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