

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

C.M. NOS.1817-19 C OF 2014 &

R.S.A. NO.807 OF 2014

DATE OF DECISION: MAY 25, 2016

Ram Singh @ Ram Asra and others

.....Appellants

VERSUS

Gurdev Singh

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Balbir Singh Saini, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.1817 C of 2014

C.M. is allowed.

**Exemption is granted from filing the certified copy of
judgement and decree of the trial Court.**

C.M. Nos.1818-19 C of 2014 & R.S.A. No.807 of 2014

**Prayer in C.M. No.1818 C of 2014 is for condonation of delay
of 289 days in filing the appeal.**

**The reasons mentioned for the inordinate delay is that the
Appellate Court decided the appeal on 21.11.2012 and certified copy
thereof was applied on 01.12.2012, which was prepared on 05.12.2012 and
delivery taken on 17.12.2012. Thereafter appellant No.1, namely, Ram**

Singh @ Ram Asra, who is the general power of attorney holder of appellant Nos.2 and 3, fell ill and remained confined to bed. However, the documents, as has been produced in Court today, indicate that he suffered a fracture on 06.03.2013 and was discharged on 13.03.2013 from the hospital and prior thereto, there is no evidence on record, indicating that he was bedridden and not in a position to engage a counsel or to file the appeal. Even thereafter, a certificate of the doctor has been produced, which is dated 05.07.2013, according to which, appellant No.1 was admitted in the hospital on 26.06.2013 and discharged on 28.06.2013. These certificates do not explain the inordinate delay of 289 days in filing the appeal.

In any case, the limitation for filing the appeal is three months, which has expired prior to appellant No.1 having suffered the fracture on 06.03.2013. Therefore, the explanation, as has been put-forth, is not acceptable. The appellants have failed to explain the delay in filing the appeal and, thus, the same deserves dismissal.

Still, the arguments were heard on merits.

Challenge in this appeal is to the judgement and decree dated 17.11.2009 passed by Civil Judge (Junior Division), Khanna, whereby the suit filed by Gurdev Singh, brother of the appellants, for joint possession and declaration to the effect that Mutation No.4303, sanctioned in favour of the appellant-defendants, is illegal, null and void as the same has been so done without complying with the principles of natural justice and further is contrary to the Will dated 09.07.1990, which was executed by Rai Singh, who was father of the parties to the suit, stands decreed, holding him to be the successor to deceased Rai Singh, appeal against which preferred by the appellant-defendants has been dismissed by the Additional District Judge,

Ludhiana, on 21.11.2012.

Counsel for the appellant has submitted that the Will dated 09.07.1990 has not been proved on record as only one of the two attesting witness of the Will, namely Resham Singh (PW1) has been produced in Court and the other attesting witness, Ranjit Singh, has not put in appearance. He contends that non-production of other attesting witness would be fatal to the claim of the respondent-plaintiff. That apart, he asserts that mutation, which has been sanctioned in favour of all the natural successors to the property of the deceased, Rai Singh, has attained finality as the appeal preferred by the respondent-plaintiff against the order of sanction of mutation has been dismissed by the Collector on 12.10.1999 and, therefore, could not have been assailed by the respondent-plaintiff in the suit. Prayer has, thus, been made for setting-aside the impugned judgements and decree.

This contention of learned counsel for the appellants cannot be accepted in the light of the fact that the requirement of the statute is with regard to proving the Will through one of the two attesting witnesses, which has rightly been done in the present case. PW1 Resham Singh has duly proved the execution of the Will and has given all details in this regard. Apart from him, PW2 Rajinder Pal Sood, Deed Writer, has corroborated the version of Resham Singh and has also stated that the thumb impression by Rai Singh and signatures by Ranjit Singh and other attesting witness, Resham Singh, were put by them in his presence after he had read over the Will, which he had scribed on instructions from Rai Singh. Not only that, the contents of the Will were entered by him in his register at Sr.No.650, dated 09.07.1990 and had got thumb impressions of Rai Singh and

signatures of Ranjit Singh and Resham Singh on the said entry in his register. The due execution of the Will dated 09.07.1990 (Ex.P2) has, thus, been duly proved in accordance with law.

The contention of learned counsel for the appellant that the mutation sanctioned as per the natural succession of Rai Singh has attained finality because of the dismissal of the appeal of the respondent-plaintiff by the Collector again cannot be accepted in the light of the fact that mutation does not confer any title and present is a case where a duly executed Will of Rai Singh, the owner of the property, has been duly proved, according to which Gurdev Singh, respondent-plaintiff and appellant No.1, Ram Singh @ Ram Asra, the two sons of Rai Singh, have inherited his estate in equal share. The lower Appellate Court has, therefore, rightly concluded that the respondent-plaintiff is entitled to ½ share out of the disputed property on the basis of Will. It may be added here that there is no limitation for initiating proceedings in a Civil Court for injunction and declaration, which are based upon title, as in the present case. The evidence, which has been brought on record, clearly establishes that the impugned Mutation No.4303 sanctioned on the basis of the natural succession is contrary to the Will as executed by deceased Rai Singh and, therefore, the same cannot sustain and has rightly been set-aside by the Courts below.

No other point has been argued by learned counsel for the appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal.

In view of the above discussion, the appeal stands dismissed on merits as well as on the delay and latches.

Since the main appeal stands dismissed on merits and delay and latches, C.M. No.1819-C of 2014 for restraining the respondent from alienating the suit land is also dismissed.

May 25, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE