

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.103

RSA No.4045 of 2015 (O&M)
Date of decision: 11.08.2017

Shrimati Gurjeet Kaur

....Appellant

versus

Gursharan Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. R.S. Bains, Advocate
for the appellant.

DEEPAK SIBAL, J. (Oral)

CM No.9852-C of 2015

Through this application filed under Section 5 of Limitation Act, condonation of the delay of 40 days in filing the appeal, is prayed for.

After going through the contents of the application and hearing learned counsel for the applicant/appellant, the application is allowed and the delay of 40 days in filing the appeal is condoned.

RSA No.4045 of 2015

The appellant, who was the plaintiff before the trial Court had filed a suit seeking therein a declaration to the effect that she is owner in joint possession of the land measuring 1/9 share of 8 biswas comprised in

khewat No.644, khatauni No.3943, khasra No.265 min, situated within the revenue limits of Patti Jhuti, Bathinda, plot bearing No.117, measuring 40' X 90' Vishwas Nagar, Near Home Land Enclave, Bathinda, 1/3 share of 1 ½ biswa comprised in khewat No.1700, Khatauni No.9582, Khasra No.1964 min, situated within the revenue limits of Patti Jhuti, Mata Jivi Nagar, Barnala Bye pass Road, Bathinda and 1/3rd share of land measuring 110 kanals 17 marlas comprised in khewat No.34, khatauni No.76 to 81, khasra No.61/1(1-9), 161(0-3), 168 (0-3), 117 min (7-9), 120/2 min (15-16), 121/2 min (3-1), 120/1(5-4), 121/1(2-16), 373 min (10-0), 373/2(9-17), 61/2(0-5), 117 min (3-0), 118(5-8), 119(15-0), 120/2 min (6-0), 121/2 min (5-10), 373 min (9-19), 374/1(5-0) and 374/2(4-17) situated in the revenue limits of village Ghaso Khana, Tehsil Talwandi Sabo, District Bathinda (hereinafter referred to as the 'suit properties'). A declaration was further sought to declare mutation No.59118 with regard to inheritance of Ajaib Singh as null and void and Will dated 10.10.2007 of Ajaib Singh to be a forged and fabricated document. Injunction to restrain the defendants from alienating the afore-referred properties beyond their shares was also prayed for.

The case of the appellant/plaintiff as set up by her before the Trial Court was that she was the widow of Ajaib Singh, whereas the defendants/respondents were his sons from his first wife Karamjit Kaur, who died on 19.03.1973. Ajaib Singh was stated to own the suit properties, who died on 25.01.2008 without having executed any Will during his lifetime. The appellant sought 1/3rd share in the suit properties by way of inheritance and a declaration that the Will of Ajaib Singh set up by the respondents on which was based the impugned mutation be declared null and void being a forged and fabricated document.

Upon notice having served upon them, the respondents appeared before the Trial Court and refuted the above claim set up by the appellant. It was submitted that prior to Ajaib Singh's demise the relations of the appellant and Ajaib Singh were not cordial due to which they lived separately for several years. The suit properties which were self acquired properties of Ajaib Singh were rightfully and legally, through a registered Will dated 10.10.2007, bequeathed by Ajaib Singh to the respondents. Such Will was executed by Ajaib Singh with his free and sound disposing mind and on the basis of the Will mutation was also sanctioned in favour of the respondents by the revenue authorities.

The Trial Court came to a conclusion that the appellant was Ajaib Singh's legally wedded wife. However, so far as the challenge to the Will by the appellant was concerned, no merit in the same was found as the registered Will was not only produced by the respondents but was also found to be duly proved by them through the testimonies of its scribe and marginal witness. The above conclusion was drawn after the Trial Court found that the suit properties were self acquired by Ajaib Singh. The suit was dismissed.

The challenge to the dismissal of the suit by the appellant by way of an appeal before the Appellate Court met the same fate as her suit, giving her a cause to approach this Court through the present second appeal.

Learned counsel for the appellant has submitted that Ajaib Singh's Will dated 10.10.2007 is shrouded with suspicious circumstances which are enough to declare it null and void. The Will was executed four months prior to Ajaib Singh's demise during which period he was unwell and continuously absent from office. The Will was thus not a result of free

consent on his part. The complete exclusion of the appellant-his legally wedded wife from the Will was a circumstance which was enough to discard the Will.

The onus to prove the Will was upon the respondents and the record reveals that they have successfully discharged such onus by not only producing the registered Will but also proving the same through the deposition of its scribe Gurpreet Singh, Advocate and its marginal witness Harbans Singh. Gurpreet Singh and Harbans Singh categorically stated that Ajaib Singh executed the Will in question and then got the same registered as per his free consent. Gurpreet Singh further testified that after scribing the Will, he read over the same to Ajaib Singh, who after admitting the correctness thereof appended his signatures thereto in his presence and in the presence of other witnesses who also appended their signatures upon the Will alongwith him. To the same effect was the deposition of Harbans Singh, who was the marginal witness to the Will. Both Gurpreet Singh, and Harbans Singh also deposed that at the time of execution and registration of the Will, Ajaib Singh was in good health and of sound disposing mind. The above witnesses were put to lengthy cross-examination but the same yielded nothing which would support the appellant's case.

So far as the exclusion of the appellant from the Will is concerned, once the genuiness of the Will has been proved then the exclusion from the Will of the appellant would not render the Will null and void, especially, when it is not disputed by learned counsel for the appellant that it is the appellant, who being a nominee is the recipient of all the service benefits of Ajaib Singh, who at the time of his death was serving as Assistant Executive Engineer (AEE) with the erstwhile Punjab State

Electricity Board.

No other issue was urged.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 11, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No