

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

1. **RSA No. 6576 of 2016 (O & M)**
Date of Decision:-28.02.2017

Jasmeet Kaur @ Amandeep Kaur

...Appellant

Versus

Arvinder Singh Dhingra

...Respondent

2. **RSA No. 6688 of 2016 (O & M)**

Jasmeet Kaur @ Amandeep Kaur

...Appellant

Versus

Arvinder Singh Dhingra and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ashish Verma, Advocate
for the appellant(s).

HARI PAL VERMA J.

C.M. No.17206-C of 2016

Prayer in this application filed under Section 5 of the
Limitation Act read with Section 151 CPC is for condonation of delay of
182 days in re-filing the appeal.

Learned counsel for the applicant has stated that there is no delay in filing the appeal, but there is delay of 182 days in re-filing the appeal. The appeal was filed on 11.2.2016 i.e. within limitation. The appeal was checked by the Registry on 19.3.2016 and certain objections were raised. The applicant is an old widow and not much educated. She was not in possession of necessary records for the purpose of filing of this regular second appeal. There is no other male member in her family, therefore, she herself had to collect all the mentioned documents/record, enabling the conducting lawyer to refile the appeal. In this process the delay has occurred, which is not intentional.

In view of the facts narrated above, the application is allowed and the delay of 182 days in re-filing the appeal is condoned.

RSA No.6576 of 2016

Since both these appeals i.e. RSA No.6576 of 2016 and RSA No.6688 of 2016 are inter connected, the same are being taken up altogether and this common order shall dispose of both the aforesaid appeals. For the sake of brevity, the facts are being taken up from RSA No.6576 of 2016.

The appellant/defendant has filed the present appeal against the judgment and decree dated 30.9.2015 passed by learned Additional District Judge, Amritsar, whereby the appeal filed by the appellant/defendant against the judgment and decree 27.7.2013 passed by the Civil Judge (Junior Division), Amritsar, was dismissed.

Briefly stated respondent/plaintiff has filed a suit for declaration to the effect that he is owner of the moveable and immoveable

properties owned by Shri Mohinder Singh Dhingra son of Shri Gopal Singh Dhingra, as well as declaration to the effect that he is the only person to carry on the business in the name and style of M/s Dhingra General Store, in a shop situated in a building having plot No.22, Bazar Pasham Wala, Amritsar as sole proprietor after the death of his father (i.e. Mohinder Singh Dhingra). The plaintiff along with his father was running a partnership business in the name and style of M/s Dhingra General Store vide partnership deed dated 1.4.2002. The business was in the nature of sale of general merchandise goods, ready-made garments, luggage containers, briefcases of all kinds and quality etc. The plaintiff was partner in the firm to the extent of 50% and the premises was taken on rent from Mandir Shri Shankar Nath Ji @ Rs.150/- per month vide separate rent note dated 7.3.1998, executed by his father Mohinder Singh Dhingra being partner of the firm. However, Mohinder Singh Dhingra died on 25.6.2007, but before his death he had executed a Will dated 10.5.2000 in his sound disposing state of mind. He bequeathed his entire share in the partnership business in favour of the plaintiff along with tenancy rights. It was specifically mentioned in the Will that the entire business of M/s Dhingra General Store shall be taken over by the plaintiff along with goodwill and the tenancy rights. The plaintiff shall be competent to deal with debtors and creditors with complete control over the entire business. Therefore, after the death of Mohinder Singh Dhingra on 25.6.2007, petitioner had become the sole proprietor of the entire business and the defendant has no right, title or interest and concern with the said business. Vide aforesaid Will the

appellant/defendant has also been given the right to recover and realize rent for her survival and maintenance from the various tenants in the property as detailed in the Will dated 10.5.2000. Therefore, by virtue of the Will dated 10.5.2000 executed by Mohinder Singh Dhingra, plaintiff became the owner of all movable and immovable properties left by Mohinder Singh Dhingra except right of residence in Kothi No.130, Joshi Colony, Amritsar till her death, in favour of the defendant.

The defendant appeared and filed written statement raising preliminary objections that plaintiff has got no locus standi to file the present suit, the suit is not legally maintainable, the suit is based upon forged and fabricated Will executed by Mohinder Singh Dhingra. In fact Mohinder Singh Dhingra had executed a legal and valid Will dated 10.11.2006 bequeathing thereby his various properties in favour of the plaintiff and defendant and thereby the appellant/defendant became the owner in possession of the property left by Mohinder Singh Dhingra on the basis of Will dated 10.11.2006, which excludes the locker bearing No.100 with the Central Bank of India branch Hall Bazaar, Amritsar. Even the jewellery belonging to the defendant is lying in the locker. The suit is also bad for mis-joinder and non-joinder of the necessary parties as other legal heirs of Mohinder Singh Dhingra were not made party. The factum regarding death of Mohinder Singh Dhingra on 25.6.2007 has not been disputed by the parties. The defendant admitted that earlier Mohinder Singh Dhingra was married to Jagdish Kaur and out of their wedlock two children were born.

From the pleadings of the parties, following issues were framed by the trial Court :-

1. Whether the plaintiff is owner in possession of the movable or immovable properties owned by Mohinder Singh ? OPP
2. Whether the plaintiff is entitled to carry on business in the name and style of M/s Dhingra General Store ? OPP
3. Whether the plaintiff is entitled to declaration as prayed for ? OPP
5. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
6. Whether the plaintiff has no locus standi or cause of action to file the present suit ? OPD
7. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
8. Whether the suit is bad for mis-joinder of parties ? OPD
9. Whether the suit is bad for non-joinder of necessary parties ? OPD
10. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction ? OPD
11. Whether the civil Court has no jurisdiction to entertain, try and decide the present suit ? OPD
- 11-A. Whether Mohinder Singh Dhingra executed a legal and valid Will on 10.5.2000 during his life time with respect to his property ? OPP
- 11-B. Whether Mohinder Singh Dhingra executed a legal and valid Will dated 10.11.2016 during his life time with respect to his property? OPD
12. Relief.”

In order to prove the Will dated 10.5.2000 (Ex.P1) the plaintiff has examined Mr. Gurpreet Singh, Advocate (PW3) and Gurinder Singh

(PW4) respectively. PW2 Parmod Kumar Sodhi, Deed Writer was also examined, who deposed that he scribed the Will dated 10.5.2000, executed by Mohinder Singh Dhingra and the contents of the Will were read over and explained to Mohinder Singh Dhingra, who after admitting the correctness of the same had signed the Will in his presence. PW1 Jaspal Singh Clerk from the office of Sub Registrar, Amritsar produced the Bahi register containing the Will dated 10.5.2000, executed by Mohinder Singh Dhingra. He deposed that the original Will dated 10.5.2000 was presented for registration in the office of Sub Registrar and the same was attested by Gurpreet Singh and Gurinder Singh. The Will dated 10.5.2000 was registered as document No.133 on Bahi No.3, Zild No.419 at page No.50/52. In this manner, he has proved the endorsement of the Sub Registrar as Ex.P2 on the said Will dated 10.5.2000 (Ex.P1). However, the appellant/defendant Jasmeet Kaur has stepped into witness box as DW1 and tendered her duly sworn affidavit as Ex.DW1/A, reiterating the contents of the written statement. She has examined Bakshish Singh as DW2 in support of the Will dated 10.11.2006 (Ex.D1) executed by Mohinder Singh Dhingra. The learned trial Court vide judgment and decree dated 27.7.2013 has decreed the suit, as the plaintiff had duly proved the lawful execution and genuineness of the Will dated 10.5.2000 (Ex.P1) by Mohinder Singh Dhingra. Accordingly, plaintiff was held entitled to be owner of all movable and immovable properties left by Mohinder Singh Dhingra and also became the sole proprietor of M/s Dhingra General Store.

Feeling aggrieved by the aforesaid judgment and decree dated

27.7.2013, defendant filed an appeal. The appeal was also dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 30.9.2015.

It is in the aforesaid circumstances the appellant/defendant has filed the present appeal.

The appellant has formulated the following substantial questions of law in the present appeal :-

- “ i) Whether the subsequent Will is not to be upheld when the same is proved ?
- ii) Whether the Will dated 10.5.2000 should not be discarded on the ground that the witnesses are the interested witnesses ?
- iii) Whether the Will dated 10.5.2000 can be held valid only on the ground that it is registered document ?”

Learned counsel for the appellant/defendant has argued that the judgments and decrees dated 27.7.2013 and 30.9.2015 passed by the Courts below in favour of respondent/plaintiff holding that the Will dated 10.5.2000, as genuinely executed by Mohinder Singh Dhingra is contrary to law and the record. In fact the subsequent Will dated 10.11.2006 as propounded by the appellant has been broadly discarded on the plea that the Will dated 10.11.2006 is an unregistered document and therefore execution of the same has been disbelieved. The witnesses of the Will dated 10.5.2000 as produced by the respondent have given contradictory and inconsistent evidence, but the discrepancies noticed in their statements have not been discussed by the Courts below. There was no material available before the Courts below to disbelieve the execution of the Will dated

10.11.2006 executed by Mohinder Singh Dhingra in favour of the appellant. This Will was duly executed by the deceased Mohinder Singh in favour of the appellant/defendant and therefore, the appellant was entitled to share in all movable as well as immovable properties of the deceased Mohinder Singh Dhingra, besides the articles lying in the locker. The Will dated 10.11.2006 which was executed later in time by the executant was required to be accepted as a genuine one and to be acted upon.

I have heard learned counsel for the appellant.

There is no dispute that Mohinder Singh Dhingra was earlier married with one Jagdish Kaur and from this wedlock two children i.e. the plaintiff Arvinder Singh and Jupinder Kaur @ Bindia were born. But after the unfortunate death of his wife Jagdish Kaur, Mohinder Singh Dhingra had performed second marriage with appellant/defendant Jasmeet Kaur @ Amandeep Kaur. Mohinder Singh Dhingra had died on 25.1.2007. The dispute is between two Wills i.e. dated 10.5.2000 set up by plaintiff, executed by Mohinder Singh Dhingra, which is registered one. Whereas the defendant has set up unregistered Will dated 10.11.2006 executed by Mohinder Singh Dhingra. So far as the Will dated 10.5.2000 (Ex.P1) in favour of plaintiff is concerned, the same fulfil the parameters, prescribed as per law. This Will has duly been entered in the deed register at Sr. No.184 dated 10.5.2000. The Will was presented before the Sub Registrar by Mohinder Singh Dhingra. Jaspal Singh (PW1) Clerk of Sub Registrar has produced the relevant record and stated that the Will dated 10.5.2000 was registered by the Sub Registrar, Amritsar vide endorsement (Ex.P2).

Mohinder Singh Dhingra, the executant of the Will was literate person, which has duly been admitted by the defendant Jasmeet Kaur in her cross-examination as well and was well conversant with the legal and other acts. The Will (Ex.P1) contains every possible detail of property, business as well as his children and every possible precaution has been taken by the executant. Thus the Will (Ex.P1) dated 10.5.2000 is proved to be genuine, whereas the execution of Will dated 10.11.2006 (Ex.D1) is concerned, the defendant has produced only one witness i.e. DW2 Bakhshish Singh, who in his affidavit (Ex.DW2/A) has stated that Mohinder Singh Dhingra was known to him and he had scribed the Will in his presence and that of one Rattan Singh, typist. The contents of the Will were read over to Mohinder Singh Dhingra, who after admitting the same signed the Will in their presence. But this Will fell short of requirement regarding execution and attestation, as provided under Section 68 of the Indian Evidence Act. It has nowhere been stated by DW2 Bakhshish Singh and Ram Rattan Singh, the attesting witnesses, that they signed the Will in the presence of Mohinder Singh Dhingra. In this manner, the execution and attestation of the Will has not been legally proved. The defendant has also failed to prove as to how Bakhshish Singh (DW2) had close acquaintance with Mohinder Singh Dhingra, whereas the Will (Ex.P1) was signed and witnessed by the persons who were close to said Mohinder Singh Dhingra. The Will dated 10.11.2006 does not bear the name or stamp of the typist, which shows that such typist of Will dated 10.11.2006 wanted to conceal his identity for the reason that the Will (Ex.D1) was not a genuine one. The defendant has not

assigned any reason as to why Rattan Singh typist as witness has not been examined. Moreover, the Will (Ex.D1) was unregistered as compared to validly executed Will (Ex.P1), which was duly registered. In this manner, the Will dated 10.11.2006 is surrounded by suspicious circumstances and was not legally proved.

Since the claim of the parties is based on the Will dated 10.5.2000, which has duly been proved by the propounder and meets the parameters of Section 68 of the Indian Evidence Act, this Court does not find any illegality and infirmity in the judgments passed by the Courts below. It being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No other point was argued.

No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

February 28, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No