

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

**RSA No.1224 of 2017 (O&M)
Date of Decision: 18.8.2017**

Smt.Savitri Devi

...Appellant

Versus

Smt.Ram Piyari and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravinder Malik, Advocate for the appellant

RAJIV NARAIN RAINA, J. (Oral)**CM No.2941-C of 2017**

This is an application for condonation of delay of 38 days in filing the appeal. The application is supported by an affidavit. For the reasons mentioned therein, the CM is allowed and the delay of 38 days in filing the appeal is condoned.

RSA No.1224 of 2017 (O&M)

In absence of an issue as to the nature of the property bequeathed by late Gugan Ram Dudi in favour of his sons in exclusion of his daughter, who is the plaintiff in the suit and the present appellant, the power of executing testamentary will was possessed by the testator, the father. The Will was executed on 16th November, 2000. The plaintiff did not even claim an issue whether the Will was null and void, ingenuine or surrounded by suspicious circumstances, and therefore, any observation made by the courts below regarding the Will has to be disregarded as fact which is not in issue.

The burden of proof and the onus was on the plaintiff to establish that the suit property was ancestral in nature by bringing cogent evidence, and therefore, it was for plaintiff to show the testamentary will

was liable to be ignored and not binding on her rights. Right of daughters to Hindu coparcenary property (even assuming suit property was of the kind) came into force for the first time by the amendment to the Hindu Succession Act, 1956 brought by Parliament in the year 2005, whereas the Will settled rights by testamentary succession on its beneficiaries about five years before the amendment.

Then the presumption is that testator was competent to dispose of the suit property as self acquired with absolute right to bequeath by exclusion of daughters. The presumption has not been rebutted plaintiff by production of legal evidence then suit would fail against the beneficiaries.

In the present case, to reemphasize, the execution of the Will is prior to the amendment and hence nothing could be wrong in what the courts below have dispensed in dismissing the suit for want of proof by evidence. Any oral testimony with respect to the Will is irrelevant since the Will is not under challenge and if the Will is not under direct challenge and there is no specific prayer in the suit nor issue framed regarding the Will, no relief can be granted to the appellant.

For lack of evidence and supporting materials on record justifying a decree in favour of the plaintiff, it is not possible for this Court to interfere with the findings of fact recorded by the courts below. The judgments and decrees of the courts below do not suffer from any illegality, irregularity or perversity nor the same can be said to be tainted with any error apparent on the face of record so as to require interference by this Court in this appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

For the foregoing reasons, this appeal is held to be without substance and is dismissed.

18.8.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No