

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

RSA No.4060 of 2017 (O&M)

Date of Order: 08.09.2017

Jagdish Mitter and another

..Appellants

Versus

Pardeep Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Virk, Advocate, for
Mr. G.S.Nagra, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

Defendant nos.6 and 7 are in regular second appeal against concurrent findings of fact arrived at by the Courts below.

The dispute in the present case is with regard to estate of late Sh. Bhag Singh @ Dilbagh Singh, who died issueless. There are two Wills, one set up by the plaintiff, dated 25.08.2002 and the other set up by defendants no.6 and 7, dated 26.06.2000, a registered Will.

Both the Courts after appreciating the evidence available on the file, recorded a finding of fact that the Will dated 26.06.2000 is surrounded by suspicious circumstances. Will dated 26.06.2000 was scribed by a very close relative and the evidence of the attesting witness is not reliable.

It may be noted that as per the Will dated 25.08.2002, it has been proved on the file by examination of Bakshish Singh as PW1, scribe and attesting witness Madha Singh as PW3, that Shri Bhag Singh has bequeathed the property in favour of legal heirs of his sister Koshaliya Devi equally. Appellants are parents of defendants no.1 to 4. As per the Will

dated 25.08.2002, defendants no.1 to 4 were given 1/3rd share in the disputed property, whereas remaining 2/3rd share has been given to other legal heirs of Koshaliya Devi.

Although, learned counsel for the appellants has tried to find lacunas in the judgment passed by the Courts below, however, no substantial argument was addressed as to how the findings of fact arrived at by the Courts below are wrong and require interference in the regular second appeal. The findings of the Courts essentially are findings of fact, which cannot be interfered in the regular second appeal, unless any substantial misreading of evidence is brought to the notice of the Court.

In view of the discussion made hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

C.M.No.10438-C of 2017

Prayer in this application is for condonation of delay of 453 days in filing the appeal.

A reading of the application would show that the appellants have failed to give any sufficient cause to condone the huge delay of more than a year. The only assertion made in the application is extracted as under:-

“3. That the Ld. Additional District Judge, Gurdaspur dismissed the appeal filed by the appellants vide judgment and decree dated 5.12.2005. The clerk of the counsel in lower Court applied for obtaining the certified copy of the judgment and decree dated 5.12.2015 and same was prepared and delivered on

8.1.2016. Thus, Regular Second Appeal could have been filed upto 3.5.2016. The appellant no.1 is patient of Asthma and as such he could not contact his counsel for obtaining the certified copy of the judgment and decree dated 5.12.2015. The appellant recovered from his illness and contacted his counsel at Gurdaspur in third week of May 2017 and came to engage his counsel. The present appeal is being filed before this Hon'ble Court.”

In my considered opinion, the reason given for seeking condonation of delay of 453 days, is wholly insufficient. Therefore, the application is also dismissed.

Appeal as well as application for condonation of delay are dismissed.

September 08, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No