

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

Sr. No.106

**RSA No.4448 of 2017 (O&M)
Date of decision: 18.09.2017**

Lakhwinder Kaur @ Gurbachan KaurAppellant

versus

Gurpreet Singh and anotherRespondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Mayuri Lakhanpal Kalia, Advocate
for the appellant.

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DEEPAK SIBAL, J. (Oral)

C.M. No.11598-C of 2017

Through this application filed under Section 5 of the Limitation Act, 1963 read with Section 151 CPC, condonation of delay of 47 days in filing of 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 47 days in filing of the appeal is condoned.

CM stands disposed of.

Main Case

The appellant, who was the plaintiff before the trial court had filed a suit for declaration seeking therein to be declared joint owner in possession of the land so described in the head note of her plaint (for short

the 'suit property'). Will dated 29.05.2006 allegedly executed by her husband bequeathing his property to the respondents as also the mutations entered on the basis thereof were also challenged. Consequential relief of permanent injunction restraining the respondents from dispossessing the appellant from the suit property as also from alienating the same was also sought.

The case set up by the appellant before the trial court was that she was the legally wedded wife of Milkha Singh and out of the wedlock one son was born, who had died a bachelor on 11.08.1994. She and her husband were living peacefully and happily. Milkha Singh died on 25.11.2009 without executing any Will during his lifetime and therefore, on his death, the suit property was claimed by her by way of inheritance. The Will dated 29.05.2006 as set up by the respondents was challenged by stating it to be a forged document. Annulment of the mutation entered into on the basis of the afore-referred Will was also sought. It was further the case of the appellant that after the death of Milkha Singh, she had gone to the Halqa Patwari and had asked him to enter the mutation on the basis of inheritance. On his assurance that he would do the needful, she came back but when she revisited him in November 2011, she found out that the impugned mutations had been got entered in the revenue records at the instance of the respondents on the basis of the afore-referred Will of Milkha Singh. Thereafter the respondents threatened to dispossess her from the suit property and it is in these circumstances that she had filed the suit for the afore-referred reliefs.

The respondents appeared before the trial court and submitted that the appellant had no claim over Milkha Singh's property as she had

resided separately from him for the last more than 20 years. On the basis of registered Will dated 29.05.2006 executed by the Milkha Singh, they laid claim to the suit property as also defended the mutations entered on the basis thereof. It was their case that Milkha Singh had bequeathed his property to the respondents for the reason that it were the respondents who were living with Milkha Singh and looking after him for the last several years.

The trial court dismissed the appellant's suit and her appeal against such judgment and decree passed by the trial court met the same fate as her suit giving her a cause to knock the doors of this Court through the present second appeal.

Learned counsel for the appellant submitted that the appellant being the legal heir of Milkha Singh was entitled to his property after his death and that the Will dated 29.05.2006 set up by the respondents had been fabricated by the respondents only to usurp Milkha Singh's property. She submitted that there was no reason for Milkha Singh to completely exclude the appellant from the suit property as both of them were living happily till the time he died.

No merit is found in the above contentions.

In support of her case, the appellant was her only witness. No other person was produced by her to prove that till the time Milkha Singh died, both the appellant and Milkha Singh were happily living together. On the other hand, two witnesses belonging to the same village where Milkha Singh resided were produced by the respondents in support of their version that the appellant had deserted her husband many years ago and had gone to live at her parental house in Uttar Pradesh. Cross-examination of both of

these witnesses could not even dent the respondents' version.

The appellant had admitted that her parental house was in Muzaffarnagar, Uttar Pradesh; from a long time prior to her husband's demise she was residing there; at the time when her husband expired she was residing at her parental home; at the time of Milkha Singh's death the respondents were staying with him in his house; respondents were in possession of the suit property and that she did not know whether her husband used to sign or append his thumb impression on documents. These admissions by the appellant coupled with the testimony of the witnesses produced by the respondents as also for the reason that the appellant did not produce any other witness except herself, it is apparent that she had deserted her husband for a long time and that it were the respondents who were living with him and serving him.

The Will of Milkha Singh dated 29.05.2006 is a registered document. Registration of a document certainly adds weight to its evidentiary value which of course is rebuttable. The respondents, who were Milkha Singh's nephews, produced the original Will as also one of its attesting witnesses who categorically deposed that the Will dated 29.05.2006 was scribed at the instance of the Milkha Singh in favour of the respondents and after scribing it, the same was read over and explained to Milkha Singh who only after understanding the contents thereof thumb marked the same in token of its correctness. The registration clerk in the office of the Sub Registrar, Tarn Taran, was also produced who submitted that the Will was registered by the then Joint Sub Registrar, Tarn Taran. The cross-examination of the above witnesses at the instance of the appellant yielded nothing which could support her case. No evidence was produced

by the appellant to prove that the Will was forged.

In view of the above, no interference is warranted in the concurrent findings recorded by the trial court as also appellate court and no question of law, much less a substantial question of law is found to arise in the present appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 18, 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>