

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.M.Nos.3236-3237-C of 2017 in
R.A.No.37-C of 2017 in
R.S.A.No.439 of 1987
Date of Decision: April 21, 2017

Harphool (since deceased) through L.Rs. & others

...Applicant/appellants

Versus

Ram Pal & others

...Non-applicant/Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Yogesh Chaudhary, Advocate,
for the applicant-appellants.

AMIT RAWAL, J.

CM Nos.3236-3237-C of 2017

For the reasons mentioned in the applications, which are supported by affidavits, the delay of 31 days in re-filing and 63 days in filing the application for review is condoned.

Applications stand disposed of.

R.A.No.37-C of 2017

On merits, Mr.Yogesh Chaudhary, learned counsel appearing on behalf of the applicant-appellants, after having taken objection from the previous counsel, has submitted that against the judgment dated 21.9.2016 passed by this Court, now sought to be reviewed, the applicant-appellants had filed a Special Leave to Appeal (C) No.(s) 31331 of 2016 and the Hon'ble Supreme Court, vide order dated 11.11.2016, after entertaining the request of the applicant-appellants for withdrawal of the special leave

petition to file a review petition, disposed of the same in the aforementioned terms. It is in this context, the present review application has been filed.

He has submitted that a specific issue, i.e., issue No.2 regarding nature of the property being ancestral had been framed, but this Court did not adjudicate the aforementioned fact, resulting into miscarriage of justice. In this regard, Excerpt Ex.C1 has been placed on record. An attempt was made before the Lower Appellate Court by moving an application under Order 41 Rule 27 CPC to place on record the jamabandies for the year 1891-92 and 1903-04 to show nature and character of the property being ancestral and having not decided the issue, there is error apparent on record.

This Court called upon the learned counsel for the applicant-appellants to apprise this Court as to how the provisions of particular paragraph of the Mullah Law would apply qua nature of the property to be ancestral being inherited by a person of 4th generation, but no provision of law or case law has been filed that Manhuri Devi, being the widow of Atma Ram, could execute Will branding her to be exclusive owner, in the absence of reference to any provision of law or relevant Section 14(1) of the Hindu Succession Act in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Vaddeboyina Tulasamma and others Versus Vaddeboyina Sesha Reddi (dead) by L.Rs, 1977 (3) SCC 99** and various other judgments.

As regards the other point of non-compliance of the provisions of Section 69 of the Indian Evidence Act, the children of the attesting witnesses have not been cogent and coherent. I am of the view that their testimony would be meaningless in view of the judgment recorded in the judgment sought to be reviewed, i.e., **Ved Mitra Verma Versus Dharam**

Deu Verma, 2014 (15) SCC 578. It is now settled law that in the absence of the availability of the attesting witnesses, the examination of the Sub Registrar with regard to the registered Will is sufficient requirement of law.

In my view, the aforementioned points sought to be reviewed, are not germane to the provisions of Sections 47 and 114 of the CPC and, therefore, no ground for review of the order is made out.

Resultantly, the review application is dismissed.

April 21, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No