

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CM No.5201-C-2012 in/and  
RSA No.1874 of 2012 (O&M)  
Date of Decision : 31.07.2018

Balwant Singh and others

..... Appellants

Versus

Anoop Kaur

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

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Present :- Mr. C.B.Goel, Advocate  
for the applicants-appellants.

Mr. Vipul Aggarwal, Advocate  
for the respondent.

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**AJAY TEWARI, J. (Oral)**

**CM No.5201-C-2012**

This is an application for bringing on record the legal heirs of  
Puran Singh since deceased.

For the reasons recorded, the application is allowed subject to  
all just exceptions. Persons mentioned in para No.2 of the application are  
impleaded as LR's of Puran Singh-deceased. Amended memo of parties is  
taken on record. Registry is directed to make necessary correction in the  
memo of parties.

**RSA No.1874 of 2012**

This appeal has been filed against the concurrent judgments of  
the Courts below decreeing a suit filed by the respondent.

The case of the respondent was that she had inherited the property of her late father and the appellants who were the sons of his brother had no right, title or interest in the same. The case of the appellants was that the father of the respondent, their uncle had executed a registered Will in their favour. Both the Courts found the Will to be surrounded by the suspicious circumstances and decreed the suit, hence the present appeal. The factors which were considered by the Courts below were the following :-

- (i) Death of the testator within 10 days of the execution of the Will;*
- (ii) The omission of the sole attesting witness who appeared to state that the testator had signed the Will in his presence and that he had signed the Will in the presence of the testator;*
- (iii) The admission by the attesting witness that the kidneys of the testator had failed;*
- (iv) The contradiction between the statement of the attesting witness who had admitted that he was the brother-in-law of the appellant-Joginder Singh viz-a-viz the statement of Joginder Singh who claimed that he had no relationship with Darshan Singh.*

Learned counsel for the appellants has argued that the Will was a registered Will. He has further argued that the lower appellate Court erred in rejecting an application under Order 41 Rule 27 which had been moved by the appellants praying that they be permitted to examine a hand writing expert.

In my considered opinion, the lower appellate Court correctly applied the principles behind Order 41 Rule 27. He held that right from day

one the appellants well knew that they had to prove the due execution of the Will and consequently, there was no justification for appellants not having examined a hand writing expert if they so wanted. The next argument raised by the learned counsel for the appellants is that the suit was barred because it was filed much beyond three years from the attested mutation. It is now trite to say that the suit for possession on the basis of title can not be defeated on the ground of limitation. As regards the argument that the Will was registered, no doubt that is an indication that the document has been validly executed but keeping in mind the suspicious circumstances pointed out by the Courts below, I am not persuaded to hold that the preponderance of probability is in favour of the appellants.

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

**31.07.2018**

*pooja sharma-I*

**( AJAY TEWARI )  
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No