

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

**RSA No.1444 of 2016 (O&M)
Date of decision:29.05.2018**

Kirori

... Appellant

Vs.

Sher Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Subhash Rana, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.4009-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 65 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.1444 of 2016 (O&M)

The appellant-plaintiff no.1 has not been successful before both the Courts below in claiming right in the property of Shibba, uncle who had bequeathed the property in favour of defendants by virtue of registered Will dated 31.7.1995 in a suit filed in the year 2008, whereas, Shibba died in the year 1996.

It was alleged that they were co-owners/so-sharers as Shibba died intestate, for, Shibba was brother of Ratti Ram, who died issueless intestate, therefore, his share devolved upon plaintiffs and defendant No.3 being collateral.

The defendants contested the suit and stated that plaintiffs have no stake in the property as it was self acquired property and could deal with the property in any manner, he wanted to.

Since the parties were at variance, the trial Court framed as many as six issues including the issue No.5A. On the preponderance of evidence, the trial Court dismissed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Learned counsel appearing on behalf of the appellant-plaintiff No.1 submits that onus to prove the execution and registration of the Will as per the provisions of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act, was on the propounder. The original Will has not seen the light of the day, though the Court had permitted the defendants to prove the Will by way of secondary evidence. Even two pre-requisites of secondary evidence, i.e., existence and loss have also not been proved on record, therefore, the Will was liable to be discarded and declaration qua co-ownership in favour of the plaintiff on the basis of natural succession as per the provisions of Section 8 of Hindu Succession Act, was liable to be granted, therefore, there is gross illegality and perversity in the findings under challenge.

I have heard the learned counsel for appellant-plaintiff No.1, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Rana, for, Will, *ibid* was a registered document and its existence had been proved through the office of Registrar. Deed Writer, DW2-Tuhi Ram has also been

examined and DW7-Satender Kumar-Advocate stated that Will bore the signatures of B.S.Tewatia, Advocate with whom he was working, who had appended signatures on the Will, thus, the defendants have discharged the onus as per the provisions of aforementioned Acts. On the other hand, plaintiff has miserably failed to cause any suspicious or reasonable doubt by leading direct or cogent evidence giving cause to the Court to discard the Will. Even no explanation has come forth in not challenging the Will within a reasonable period as testator of the Will concededly died in the year 1996 , whereas the suit had been filed in 2008.

All these factors weighed in the mind of the Courts below in arriving at concurrent findings of facts and law which do not warrant any interference.

No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 29, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No