

1

Date of Decision : 10.5.2018

Versus

Versus

Versus

AJAY TEWARI, J. (Oral)

CM-4381-C-2015 in RSA-1578-2015

This is an application for condonation of 348 days delay in refiling the appeal.

For the reasons recorded in the application, the same is allowed and delay of 348 days in refiling the appeal is condoned.

CM-8351-C-2017 in RSA-3460-2017

This is an application for condonation of 79 days delay in refiling the appeal.

For the reasons recorded in the application, the same is allowed and delay of 79 days in refiling the appeal is condoned.

Main Cases

These two appeals are connected and are consequently being decided by a common order.

Brief facts of the case are that Milkha Singh had one son namely Harbhajan Singh and two daughters Amarjit Kaur and Shaminder Kaur. Harbhajan Singh had three daughters (appellants in RSA 1578-2015) and a son Gurminder Singh (appellant in RSA-3460-2017).

Originally a dispute had arisen between Harbhajan Singh on the one hand and Amarjit Kaur and Shaminder Kaur (his sisters) on the other hand in respect of the estate of Milkha Singh. It was the stand of Harbhajan Singh that Milkha Singh had executed a valid registered will dated 17.7.1969 in his favour while the case of his sisters was that Will was a forgery. Another admitted fact is that there were two witnesses of that Will i.e. Angrej Singh and Mohan Singh. It is also admitted that there is neither

any averment nor any evidence on behalf of both the set of appellants as to what happened to those two witnesses, whether they were alive or dead; or if alive whether they were in a position to appear subject to the process of Court and capable of giving evidence. However it may be also mentioned here that there are two marked documents which purport to be death certificates of those abovesaid two witnesses which are marked as Mark 'A' and 'B'. In both the cases even today this is the central dispute and consequently further detailed reference to the circumstances as to how these two appeals have arisen may not be necessary.

The lower Courts have unanimously rejected the Will propounded by Harbahajan Singh and now two sets of appellants are before me.

Learned Senior Counsel appearing on behalf of both the sets of appellants have vehemently argued that PW Ram Swaroop had duly deposed about the authenticity of the signatures of two witnesses on the Will and Kanwalpal Singh duly deposed about the scribing of the Will by his deceased-father Ajit Singh. Learned Senior counsel appearing on behalf of the respondents has however argued that the dependence on the testimony of Ram Swaroop is jumping the gun because before the appellants can take resort to that testimony they have to show that the original witnesses are either dead or not available.

I have been taken through the pleadings and the testimony extensively. Both the learned senior counsel appearing on behalf of the appellants are not in a position to deny that there is no reference of this fact either in the pleadings or in the evidence. It is the contention of the learned

senior counsel that Mark 'A' and 'B' (to which reference is made) do show that Angrej Singh and Mohan Singh had died. Learned Senior counsel for the respondents has strongly disputed this argument because as per him these documents could have been read only if somebody had stated about the death of those persons or somebody had deposed that these death certificates related to those two witnesses. I find merit in this argument and consequently hold that the testimony of PW Ram Swaroop about the authenticity of the signatures of the two attesting witnesses could not be read unless their death/incapacity was proved in view of the mandatory requirement of Section 68 of the Evidence Act. The argument that it was a registered Will or that the signatures and the seal of the Registrar had been proved would not help the appellant, since as per the mandatory requirement of Section 69 of the Act, any document which is required to be attested cannot be proved until at least one witness deposed about it.

In this view of the matter, both the appeals stand dismissed.

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

10.5.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No