

**CM-5084-C-2015 in/and
RSA-1911-2015 (O&M) and
RSA-5843-2018 (O&M)**

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

Date of Decision : 30.10.2018

**125 CM-5084-C-2015 in/and
RSA-1911-2015 (O&M)**

Vijay Pal Singh Kang

....Appellant

vs.

Shaminder Singh Kang and others

....Respondents

125-A RSA-5843-2018 (O&M)

Vijay Pal Singh Kang

....Appellant

vs.

Shaminder Singh Kang and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. S.C. Arora, Advocate
for the appellant.

Mr. Sandeep Arora, Advocate
for the caveators/respondents No. 1 to 4.

AJAY TEWARI, J. (Oral)

CM-5084-C-2015 in RSA-1911-2015

For the reasons recorded, the application is allowed. Delay of
111 days in filing the appeal is condoned.

Main Cases

These two appeals arises out of the same dispute. As regards
RSA No. 1911-2015 the same has arisen from civil suit No. 1429 of 2006
which was filed by the respondents against the appellant. As regards RSA-
5843-2018 the same has arisen from civil suit No.158 of 2013..

In the first suit, the respondents had claimed that they had inherited the property in dispute in equal shares alongwith the appellant.

The case of the appellant was that in fact the plot had been purchased by him in the name of his father and rather this fact would be clear from the fact that the father had made a Will (which was in the possession of the respondents) in which he had mentioned all his other properties but not this property. During the evidence, the appellant produced another Will on record which the Courts below declined to consider since it was neither pleaded in written statement nor in the counter claim. The Courts below noticed that as far as the allegations that he had purchased the property with his own funds, apart from the bald testimony, there is no other proof of the same. In these circumstances, the suit of the respondents was decreed. After the suit of the respondents was decreed, the appellant filed the second suit in which he claimed ownership on the basis of the same second Will which was dismissed by the Courts below on the ground of Res judicata.

The only argument raised by the learned counsel for the appellant is that once there was a Will in favour of the appellant the same could not have been ignored. He is not in a position to deny that the Will being propounded was never pleaded in the first suit.

In this view of the matter both the appeal stands dismissed.

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

**(AJAY TEWARI)
JUDGE**

**30.10.2018
anuradha**

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No