

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

RSA-39-2016(O&M)
Date of decision : 21.11.2018

Bir Singh

..... Appellant

versus

Sukhdev Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Singh, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

CM-89-C-2016

This is an application seeking condonation of delay of 10 days in re-filing the accompanying appeal.

For the reasons set out in the application, that is duly supported by an affidavit, the delay of 10 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-39-2016(O&M)

Appellant plaintiff has not been successful in claiming declaration of ownership to the extent of 1/2 share in the suit property laying challenge to the judgement and decree dated 4.4.1996 and subsequent appeal decided vide judgment and decree dated 17.8.1998 passed in civil suit no.242 of 6.5.97.

Mr.Vikas Singh, learned counsel appearing on behalf of the appellant submitted that as per the facts revealed from the pleadings of the parties, Ajaib Singh had devolved the suit property by way of will in favour of Malkiat Singh and Jasmail Singh-his two sons by disinheriting the third son Naginder Singh. Naginder Singh challenged the afore-mentioned

action of Ajaib Singh and in those proceedings the Will was said to be not proved. Thus, it was a case of intestate succession. It is also a matter of record that during the pendency of civil suit, Ajaib Singh died. The case set out by the plaintiff was that the relief sought to have been claimed is legal and valid. It is also in the manner and mode by virtue of Will Jasmal Singh acquired half share in the suit property belonging to Ajaib Singh.

I am afraid there is no substance in the submissions of Mr. Vikas Singh as besides the afore-mentioned property there was reference of another property which was owned by Ajaib Singh in his individual capacity but that has also been rejected on the principles of res judicata. There was a passing reference in this context in the judgment of the Lower Appellate Court, therefore, he was non-suited on the ground that the dispute between the parties already stands decided. The deceased was represented by one of his legal heirs hence other legal heirs cannot espouse any grievance. In this context reliance can be placed on the judgment of this Court in **Sardara Singh and another vs. Harbhajan Singh and others 1974 AIR(Pb.) 345**. It is not a case of the plaintiff that after having attained majority he filed the suit. In the absence of any Will the property was to devolve upon the three sons by way of natural succession and plaintiff cannot be allowed to rake up the issue in the second round of litigation.

Dismissed.

(AMIT RAWAL)
JUDGE

21.11.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No