

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

RSA No.4517 of 2016 (O&M)

Date of decision : 06.09.2018

Shiv Ram @ Shiv Kumar and another

...Appellants

Versus

Prem Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.P. Singh Ahluwalia, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.11747-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 22 days in refiling the present appeal is condoned.

Application is allowed.

Main case

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Jyoti Ram, the predecessor-in-interest of the parties to the litigation died on 29.09.1999 who is entitled to succeed to his property is the dispute between the parties. The plaintiffs namely two sons claim that he died intestate whereas defendants claimed that a Will was executed on 16.09.1999 bequeathing the property in favour of three sons including the

plaintiff and a daughter-in-law.

Both the Courts after finding that two attesting witnesses who have attested the Will have been examined as DW2 and DW4, dismissed the suit while returning that the Will has been proved.

Learned counsel for the appellants has submitted that no provisions have been made for the widow. He further submitted that the Testator died after 13 days of the execution of the Will.

This Court has considered the submissions and with able assistance of the learned counsel for the appellants, gone through the judgments passed by both the Courts below.

It is not in dispute that the widow of Late Sh. Jyoti Ram has not challenged the validity of the Will. It is further not in dispute that the provision has been made in the Will for the plaintiffs also. Only bone of contention is that some property has been bequeathed in favour of daughter-in-law.

In the considered view of this Court, the plaintiffs have no right to challenge the Will on the ground that the provision has not been made for the widow, once she is not aggrieved of the Will.

With regard to the second argument, it may be noticed that the plaintiffs have failed to lead any evidence that late Sh. Jyoti Ram, Testator was not in sound disposing mind while executing the Will. No doubt, death after few days can be one of the circumstance to doubt the genuineness of the Will, however, for that purpose, the party which is challenging the Will is required to lead evidence to the satisfaction of the Court that the Testator was not in sound disposing mind. In the present case, as noticed above, no

evidence has been led to that effect.

Learned counsel for the appellants has further submitted that the Courts below only put onus on the plaintiffs to disprove the Will whereas it is always for the propounder to prove the Will.

In the considered view of this Court, the defendants have discharged their onus by examining both the attesting witnesses. The evidence of both the attesting witnesses could not be impeached by the plaintiffs in cross-examination. They have withstood the lengthy cross-examination.

Learned counsel further submitted that the Appellate Court has also held that the suit is barred by limitation.

This Court is of the opinion that this issue is not required to be gone into as there are other grounds on which the judgments passed by both the Courts below can be upheld. Hence, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No