

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

RSA No.4981 of 2016 (O&M)

Date of decision : 18.05.2018

Smt. Maya Devi

...Appellant

Versus

Mam Raj and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.12969-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 39 days in filing the present appeal is condoned.

Application is allowed.

Main case

The defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff claiming to be the owner in possession of the property on the basis of the Will-testamentary document dated 04.09.1984 executed by her aunt-Harbai filed a suit for permanent injunction. It was further pleaded by the plaintiff that the defendant had filed a previous suit against the plaintiff challenging the Will executed by her mother but she

withdrew the suit on 23.01.1999. It is further pleaded case of the plaintiff that Surjan Singh who was related to the defendant filed a fresh suit again challenging the aforesaid Will. The trial Court decreed the aforesaid suit, however judgment in appeal went in favour of the plaintiff which was upheld in the Regular Second Appeal. The defendant contested the suit and pleaded that the Will is result of fraud. She also filed a counter claim claiming that the Will is forged and fabricated.

Learned trial Court after appreciating the evidence decreed the suit. In appeal, learned First Appellate Court once again re-appreciated the evidence available on the file and upheld the finding of the trial Court.

Learned counsel for the appellant has argued that the Will has not been proved by examining the attesting witnesses. He submitted that in the absence of evidence to prove the Will in accordance with Section 68 of the Indian Evidence Act, learned trial Court erred in recording a finding in favour of the plaintiff. Will is Ex.P3 on the file. Apart from the Will, the plaint filed in a suit by Surjan Singh against Harbai is Ex.P1 on the file. The statement of Jagan Nath in the previous suit is Ex.P4, whereas statement of Raghbir is Ex.P5, the judgments passed in the previous suit are Ex.P6 and Ex.P7 and the suit filed by the appellant challenging the Will is Ex.P9. The order passed by the Court when the defendant-appellant abandoned her right by not prosecuting the previous suit, has also been exhibited. On the basis of the aforesaid document, the Courts have recorded the concurrent findings that the plaintiff is in possession of the property in dispute. Learned counsel for the appellant could not point out that there was any mis-reading or non-reading of the evidence by the Courts below. Still further, defendant-

appellant did got away issue framed on the validity of the Will in the present proceedings.

Learned first Appellate Court has further noticed that the Will is dated 04.09.1984 which is now sought to be challenged claiming it to be the result of fraud and the counter claim was filed by the defendant-appellant in the year 2012 was barred by time. It has further been recorded by the Courts below that pursuant to the Will-testamentary document, the mutation was sanctioned and the revenue record was changed.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

18.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No