

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

RSA No.5387 of 2016 (O&M)

Date of decision : 23.04.2018

Sushil Kumar

...Appellant

Versus

Manju Kumari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.P. Chahar, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

On 09.03.2018, this Court while issuing notice of motion had passed the following order:-

“C.M.No.14014-C-2016

Prayer in this application is for condonation of delay of 330 days in filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 330 days in filing the appeal is condoned.

Application is allowed.

C.M.No.14015-C-2016

Deficiency in court fee has been made good.

C.M.No.14016-C-2016

Allowed as prayed for.

MAIN

Defendant No.6-appellant is in the regular second appeal against the concurrent findings of fact arrived at by

the courts below.

The dispute in the present case is with regard to the estate of Late Sh. Manphool Singh, who died on 28.08.2005. Plaintiffs and proforma defendants who are daughters of brother of Manphool Singh filed a suit for declaration and permanent injunction claiming property on the basis of a registered Will(testamentary document) dated 13.07.2005. Plaintiffs also claim that release deed executed inter-se amongst the defendants with respect to the property inherited from Manphool Singh is erroneous and the mutation got sanctioned by the defendants is also illegal. Defendants no.1 to 3, 7 and 8 filed written statement admitting the claim of the plaintiffs.

The suit was contested by remaining defendants. Plaintiffs in order to prove the execution of the registered Will (testamentary document) examine both the attesting witnesses Kalu Ram, Nambardar as PW2, Mukesh Kumar as PW3. Plaintiffs also examined Ram Kumar Sharma, the scribe, as PW1.

On appreciation of the evidence, learned trial court decreed the suit after recording a findings that the Will is proved to have been executed in accordance with the provisions of Section 63 of the Indian Succession Act, 1925 and the Will has been proved in accordance with Section 68 of the Indian Evidence Act, 1872.

First appeal preferred was also dismissed after re-appreciation of evidence available on the file.

Learned counsel for the appellant has vehemently argued that there was a family settlement between the parties and Manphool Singh had agreed to divide the property amongst the children of Chand Ram, the brother and children of a pre-deceased brother Daya Chand. He submitted that once a settlement have been arrived at

between the family members, the testamentary document dated 13.07.2005 would not operate.

It is not in dispute that such family settlement has not been proved on the file whether it is in writing or not. A photocopy was produced as Annexure-A. Neither the original was produced nor the document was proved in accordance with law.

Learned counsel for the appellant has further argued that the witnesses examined on behalf of the defendants had positively deposed about the family settlement, however, they have not been cross-examined. Therefore, the assertion with regard to the family settlement has gone unchallenged.

This court has considered the arguments of learned counsel for the appellant. Learned counsel for the appellant was requested to point out whether this argument was ever raised before the Courts below or not. He fairly admitted that this issue has not been pressed.

In a regular second appeal, re-appreciation of evidence on an issue which has not been pressed would not be permissible. In any case, once there was a registered Will executed, which has been proved on file and the family settlement has not been proved, the courts below have not committed any error in decreeing the suit filed by the plaintiffs.

Learned counsel for the appellant has pointed out that the plaintiffs are only concerned with the property bequeathed by Manphool Singh in their favour. The relinquishment deed executed by three sisters, namely, defendant nos.1 to 3 in favour of Chand Ram and Manoj Kumar, Ajay Kumar and Sushil Kumar was with respect to their own shares and plaintiffs have no right, title or interest therein.

In view of the aforesaid contention, a limited notice be

issued to respondents no.1 and 2 for 28.03.2018 only with respect to the validity of release deed dated 21.01.2003, registered on 29.01.2003.

Dasti only.

To be shown in the urgent list.”

Thereafter, repeated opportunities have been granted to the counsel for the appellant to serve the respondents. Today, learned counsel for the appellant has stated that the appellant is not coming forward to serve the respondents.

In view thereof, this Court is left with no choice but to recall last part of the order dated 09.03.2018 issuing notice to the limited extent.

In view of the detailed reasons recorded on 09.03.2018, Regular Second Appeal is dismissed.

23.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No