

RSA No.5811 of 2016
DATE OF DECISION:13.11.2018

Satinder Kaur & others

...Appellants

 V_S

Komalpreet Kaur & another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Narinder Kumar Vadehra, Advocate
for the appellants.

AMIT RAWAL, J.(ORAL)

CM No.15258-C of 2016

This application has been moved under Section 151 CPC for condonation of delay of 32 days in refiling the appeal which is duly supported by an affidavit.

Application is allowed.

Delay of 32 days in refileing the appeal is condoned.

RSA No.5811 of 2016

Appellants-defendants have not been successful in defending the suit for declaration by the plaintiff who sought declaration to the extent of co- sharer in joint possession of 2/12th share in the land measuring 50 kanals 12 marlas.

It was alleged that land measuring 133 Kanals 3 Marlas was joint khata, Balraj Singh-grandfather of the plaintiff and father in law of plaintiff no.2 had share to the extent of 50 Kanals 12 marlas with other co-sharers.

Unfortunately, Balraj Singh died in the year 1997 leaving behind Kanwalpreet Singh, Jagdeep Singh sons and Satinder Kaur and Mandeep Kaur wife and daughter. Kanwalpreet Singh performed marriage with plaintiff no.2 in the month of April 2001 and out of the wedlock, plaintiff no.1 was born. Unfortunately, he died in the year 2005 and thereafter, accrued right to the extent of 1/4th share.

Defendants-appellants opposed the suit by propounding the Will dated 07.01.1997 allegedly executed by Balraj Singh whereby the entire property vide Mutation No.607 dated 23.04.1998 was bequeathed in her favour. Defendant no.1 alleged to have transferred the suit land in favour of defendant no.2 vide transfer deed dated 15.04.2008. It was alleged that Kanwalpreet Singh had matrimonial dispute with plaintiff no.2 and in order to part with the relationship had received a sum of Rs.60,000/- on 24.06.2004. On preponderance of the evidence, the trial court decreed the suit, lower appellate court also dismissed the appeal filed by the defendant/appellant.

Learned counsel appearing on behalf of the appellant/defendant submitted that there is misdirection and misreading of statement of the witness Ajit Pal Singh DW4-attesting witness of the Will who admitted that he never been a witness of any document whereas the Courts below failed to read specific part of statement. The Will was written by Joginder Singh who has died and DW3-Rachhpal Singh his son identified his writing, therefore there was a compliance of Section 69 of Indian Evidence Act. Thus, there is illegality and perversity and prays for dismissal of the suit.

I am afraid the aforementioned arguments are not sustainable as

during the course of the proceeding cross examination of DW4 Ajit Pal Singh was read out and but nowhere he stated that he was not a witness of any other document. In examination-in-chief, he stated he had seen the photocopy of the Will as it was allowed to be placed on record by way of secondary evidence. Original has not seen the light of the day. Thus the judgment and decree entitling the plaintiffs to 2/12 share of land by way of natural heritance is most innocuous.

I do not find any illegality and perversity in the concurrent findings rendered by the Courts below. No ground is made out for interference.

The appeal is dismissed.

13.11.2018
rimpal

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No