

RSA No.5813 of 2016 (O&M)

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

**RSA No.5813 of 2016 (O&M)
Date of decision : 29.08.2018**

Amarjit Kaur

... Appellant

Versus

Charan Kaur and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Arora, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-plaintiff No.2, alleging to have attained majority in the year 2016, assailed the judgements and decrees of the Court below, whereby the suit for possession of 1/7th share in the land i.e. suit land, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The aforementioned suit was filed on the premise that the appellant-plaintiff No.2/Amarjit Kaur is daughter of Dilbag @ Bagga Singh, pre-deceased son of Makhan Singh. Dilbag Singh died on 09.12.1991, whereas Makhan Singh died on 11.06.1998. The defendants arrayed were none-else, but widow and children of Makhan Singh. It has been averred that Makhan Singh died intestate and therefore, the plaintiffs being daughters of Dilbag, pre-deceased son of Makhan Singh, had 1/3rd share.

The aforementioned suit was contested by the defendants by propounding the registered Will dated 19.07.1993.

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Both the parties led evidence in support of their respective pleadings.

Plaintiff No.1 examined herself as PW1 and brought on record Ex.P1 to Ex.P4, whereas the defendants examined DW-1 Ajit Singh, DW2 Shangara Singh and DW3 Gajjan Singh, deed writer, DW4 Sukhdev Singh and brought on record the documents Ex.D1 and D2.

The trial Court on the basis of the evidence dismissed the suit by accepting the Will on the ground that the defendants examined attesting witness to prove the execution of the same, but the plaintiffs did not lead any evidence to belie the signatures and the registration of the Will. The appeal laid before the lower Appellate Court also met with same fate.

Mr. Amit Arora, learned counsel appearing on behalf of the appellant-plaintiff No.2 submitted that the Will was surrounded by suspicious circumstances as there is no reference of Dilbag Singh, pre-deceased son of Makhan Singh, i.e. testator. The status of the appellant-plaintiff No.2, being daughter of Dilbag Singh, had not been denied. In such circumstances, the Courts below were required to reject the Will by treating Makhan Singh to have died intestate. The attesting witness did not even remember the date of the Will, which has not been noticed by the Courts below, therefore, there is illegality and perversity. The appeal is also accompanied by an application seeking condonation of delay of 1665 days on the premise that the applicant/appellant-plaintiff No.2 had attained the majority in the year 2016.

I have heard learned counsel for the appellant-plaintiff No.2, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Arora. The birth certificate of plaintiff

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No.2/appellant (Ex.P4) shows that she was born on 12.02.1990. On the date, when the suit was filed, she was 11 years' old and the appeal filed before the lower Appellate Court through guardian, was not maintainable, as she had attained majority, therefore, the averment in the application seeking condonation of delay of 1665 days is totally against documentary evidence. In such circumstances, no ground is made out for condoning the delay. Accordingly, the application bearing No.15265-C of 2016 is dismissed.

Even on merits, the plaintiffs have not been able to disprove the Will, which was a registered document, as it carried presumption until and unless any strong, cogent and positive evidence to belie is led.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

No ground is made out for interference.

The present regular second appeal is dismissed.

29.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**