

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

RSA No.616 of 2016 (O&M)

Date of decision : 16.10.2018

Sudhirdass Chela

...Appellant

Versus

Anandswarupdass Chela

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Zorawar Singh Chauhan, Advocate for
Mr. N.S. Shekhawat, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.1686-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 231 days in refiling the present appeal is condoned.

Application is allowed.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court.

The dispute in the present case is with regard to the property left by Mahant Ram Saroop Dass Chela Mahant Rattan Dass. The plaintiff-appellant claims that he is adopted son of late Mahant Ram Saroop Dass and, therefore, being Chela, he is entitled to succeed to the property.

On the other hand, the respondent-defendant has claimed that late Mahant Ram Saroop Dass had executed a registered Will in his favour on 11.11.1992. A registered Will has been held to be proved by both the Courts below. The attesting witnesses Amar Singh has been examined as DW3, apart from examination of Deed Writer as well as the Registration Clerk.

Learned trial Court has held that adoption of the plaintiff-appellant is proved and hence, the Will has become redundant but such finding is clearly erroneous. A religious head is entitled to nominate his Chelas unless a different custom or practice is proved. In the present case, neither any custom has been proved nor any evidence has been led to prove any practice.

Learned counsel for the appellant has submitted that late Mahant Ram Saroop Dass had challenged the adoption of the appellant-plaintiff but the suit was withdrawn and hence he submits that once the plaintiff-appellant is adopted son, he is entitled to succeed to the property.

In the considered opinion of this Court, the argument has no substance. Once a registered Will has been found to have been executed with free will and volition and proved on file in accordance with Section 69 of The Indian Evidence Act, 1872, in such circumstances, adopted son cannot claim any right in the presence of the registered Will.

Learned counsel for the appellant has further submitted that the Testator was of 84 years of age and, therefore, he was of a weak and feeble mind. It may be noted that no evidence in this regard has been produced. The Testator remained alive after the execution of the Will for 7 to 8 months. In absence of any evidence that the Testator was not in sound disposing mind, a registered Will cannot be ignored only on the basis of assumptions.

Hence, there is no ground to interfere.

Regular Second Appeal is dismissed.

16.10.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No