

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

(114)

RSA-6191-2016 (O&M)

Date of Decision: October 31, 2018.

Harbans Singh Grewal (deceased) through LRs

..Appellant

Versus

Swarn Singh Grewal & others

..Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Arjun Veer Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-16284-C-2016

For the reasons stated in the application, delay of 201 days in re-filing the appeal is condoned.

Application is disposed of, accordingly.

CM-16286-C-2016

Prayer in the application is for impleading the legal representative of the applicant/appellant-Harbans Singh Grewal (since deceased).

Heard.

In view of the facts mentioned in the application and arguments addressed, persons mentioned in Para 2 of the application are impleaded as legal representatives of the applicant/appellant-Harbans Singh Grewal (since deceased) for the purposes of decision of this appeal, subject to just exceptions.

Application is disposed of, accordingly.

RSA-6191-2016

The appellant-defendant is aggrieved of the judgment and decree of the first Appellate Court whereby a preliminary decree for partition and separate possession of the suit property, to the extent of 1/3rd share in favour of the plaintiff, was passed.

The suit of the plaintiff for partition of separate possession on the basis of natural succession was dismissed by the trial Court. The plaintiff claimed aforesaid relief on the basis of will dated 24.02.1997 executed by his father vide which half share each was given to the plaintiff and defendant No.1.

The defendant No.1 propounded will dated 23.01.1998 claiming himself to be exclusive owner. The trial Court dismissed the suit.

Mr. Arjun Veer Sharma, learned counsel appearing on behalf of the appellant submits that once the plaintiff failed to prove the will, the suit, as such, was liable to be dismissed. The plaintiff did not lead any evidence to prove the will and in the absence of any evidence led by the plaintiff, the suit was rightly dismissed by the trial Court.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission. The relief in the plaint is as under:-

“Suit for partition and separate possession of one house constructed in an area of about 8 biswas shown in red in the site plan attached and one ploy measuring about 2 biswas bounded as on the eastern side Malkiat Singh son of Hardit Singh, on the western side Malkiat Singh son of Sant Singh, on the northern side Maseet and on the southern side Dhandra Road shown in detail in the site plan attached by metes and bounds and for delivery

of separate possession at the spot, situated within the Red Lince of village Kheri, Tehsil Ludhiana on the basis of oral and documentary evidence.”

Concededly, father of the parties, Bachan Singh was owner of the suit property. In the absence of will, the settled principle of natural succession, as per provisions of Section 8 of the Hindu Succession Act, would prevail upon the parties. The lower Appellate Court by keeping it in mind passed the preliminary decree.

Appeal is accompanied by an application for condonation of delay of 303 days in filing. No reasonable explanation is made out.

Accordingly, the appeal is dismissed on merit as well as on the ground of delay.

October 31, 2018.
harsha

(AMIT RAWAL)
JUDGE

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