

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

RSA No.6483 of 2016 (O&M)

Date of decision : 14.09.2018

Ashok Kumar Bhalla (deceased) through LRs

...Appellant

Versus

Surinder Kumar Bhalla and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Thatai, Advocate for the appellant.

Mr. Vaibhav Sehgal, Advocate for the caveator/respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.16996-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 5 days in refiling the present Regular Second Appeal is condoned.

Application is allowed.

CM No.16997-C of 2016

Application is allowed, as the deficiency in the Court fees has already been made good.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the declining the relief of grant of mesne profits for use and occupation i.e. ₹36,000/- and tenancy rights of the property situated in Calcutta.

The plaintiff had set up a registered Will executed by Late Sh. Gaiinda Ram on 17.03.1986.

Both the Courts have found that the Will has been proved on examination of the evidence of both the attesting witnesses and the Scribe. To that extent, the suit filed by the plaintiff has been decreed. As noticed earlier, only two issues remain.

With regard to the mesne profits, both the Courts have found that no evidence has been led to prove that what was the rental value of the property which was in occupation of each of the defendants. No doubt, learned counsel for the appellant submitted that some oral evidence has been led, however, the aforesaid oral evidence has not been found sufficient to pass a decree for grant of mesne profits. Still further, learned counsel for the respondents has pointed out that the plaintiff-Ashok Kumar Bhalla who is no more has entered into the agreement to sell with one of the brother who is occupying the property on 05.08.1988, specific performance whereof has already been decreed in his favour and pursuant thereto even the sale deed has been executed.

Keeping in view the aforesaid facts, this Court does not find any ground to interfere on point of mesne profits.

Learned counsel for the appellant after realizing that the tenancy cannot be bequeathed by a testament by the tenant, choses not to press this point.

Hence, Regular Second Appeal is disposed of, accordingly.

14.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No