

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1564 of 2017(O&M)

Date of Decision: 26.7.2018

Jagbir Singh

---Appellant

versus

Smt. Phulwati

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Aditya Jain, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 3772-C of 2017

Prayer in this application is for condoning delay of 14 days in refiling the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 14 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No. 1564 of 2017(O&M)

The present appeal directs challenge against the judgment and decree dated 13.9.2016 passed by the Additional District Judge, Palwal whereby appeal preferred by the respondent -plaintiff against the judgment and decree dated 29.1.2010 passed by the Civil Judge (Junior Division), Palwal has been allowed and suit filed by the respondent-plaintiff seeking

declaration and permanent injunction by way of consequential relief, has been allowed.

The present litigation pertains to inheritance to the estate of Sh. Mahender Singh who died on 7.12.2003. The appellant is the son of Sh. Mahender Singh whereas the respondent is the widowed daughter-in-law of said Mahender Singh. The respondent-plaintiff claimed right in the suit property i.e. agricultural land measuring 17 kanal 9 marlas, situated in village Misa Tehsil Palwal, District Faridabad on the basis of natural succession. On the contrary, the appellant-defendant disputed claim of the plaintiff on the basis of testamentary succession as he set up Will dated 3.6.1993 purported to be executed by Sh. Mahender Singh in his favour on the basis whereof, mutation No. 3683 was sanctioned in favour of the appellant.

The trial court accepted plea of the defendant in respect of Will dated 3.6.1993 (Ex. DW1/A) but the findings were reversed in appeal. Perusal of the records would reveal that none of the attesting witnesses of the Will was examined to prove the Will, in accordance with Section 68 of the Indian Evidence Act, 1872 (in short “the Act”) as both the witnesses were stated to have passed away. However, the appellant examined Ashok Kumar DW4 for proving signatures of one of the attesting witnesses namely Lal Chand, Numbardar on the Will in question.

To a pointed query raised by the court, counsel has fairly informed that no evidence has been led by the appellant to prove signatures of the testator on the Will in compliance with the provisions of Section 69 of the Act. That being so, the appellant cannot claim inheritance to the estate of Sh. Mahender Singh to the exclusion of other class-I heirs on the

basis of testamentary succession. In this view of the matter, I do not find an error much less perversity in the judgment passed by the Court in Appeal warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

26.7.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No