

In the High Court for the States of Punjab and Haryana
at Chandigarh

RSA No.3039 of 2018 (O&M)
Date of Decision:- 11.05.2018

Baljeet Kaur and others

.....Appellants

Versus

Gian Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. S.K.Verma, Advocate, for the appellants.

GURVINDER SINGH GILL, J.

CM-7714-C-2018

There is an application for delay of 104 days in re-filing the appeal.

In view of the reasons mentioned in the application, delay of 104 days in re-filing the appeal is condoned.

Civil miscellaneous application stands allowed accordingly.

RSA-3039-2018 (O&M)

1. By way of filing this appeal, the appellants assail judgment dated 17.8.2017 passed by Court of learned Additional District Judge, Tarn Taran whereby the judgment and decree of Addl. Civil Judge (Senior Division), Khadur Sahib decreeing the suit in favour of the respondent-plaintiffs has been upheld.
2. The case set up by the respondent-plaintiffs is that Ajmer Singh husband of respondent-plaintiff No.1 was co-owner in possession of his share in 124

kanals of land situated in revenue estate of Village Manakdeh Ke Sahib, Tehsil Khadur Sahib, District Tarn Taran. Said Ajmer Singh died on 15.7.1999. After his death Gurjinder Singh, alleged adopted son of Ajmer Singh came into possession of the land but he had been giving share of the produce from the land to the plaintiffs but after death of Gurjinder Singh, the appellant-defendants stopped paying the share necessitating filing of the present suit.

3. The appellants-defendants who are widow and minor children of Gurjinder Singh in their reply took a stand that in fact Ajmer Singh had executed a Will dated 25.12.1998 in favour of Gurjinder Singh on the basis of which Gurjinder Singh become owner in possession of the suit property and that in fact after his death mutation No.865 had also been sanctioned in favour of appellants-defendants. The learned lower Court upon appraisal of the evidence on record held that the appellants-defendants had been unable to establish the Will in question and consequently decreed the suit in favour of the respondents-plaintiffs. The said findings were also affirmed by the lower Appellate Court in appeal vide impugned judgment.
4. Learned counsel for the appellants assailed the impugned judgment by submitting that in fact the Will in question cannot be doubted as the plaintiffs had neither filed any replication so as to dispute or challenge the authenticity of the Will in question nor the mutation proceedings on the basis of the said Will had ever been questioned. The learned counsel has further submitted that in fact one of the witnesses to the Will had also stepped into the witness box and supported the factum of execution of Will by deceased Ajmer Singh.
5. I have heard learned counsel for the appellants and have also gone through the

impugned judgment.

6. As regards the fact that Ajmer Singh was co-owner of 124 kanals of land, the same is not in dispute as the appellants-defendants themselves claim to have succeeded to the estate of Ajmer Singh on the basis of a Will in favour of Gurjinder Singh. Their short and precise question in the present case is as to whether Ajmer Singh had executed the Will in question in favour of Gurjinder Singh or not.
7. During the course of arguments, the learned counsel for the appellants also submitted that in the absence of a specific issue, having been framed by the lower Court regarding the authenticity of the Will in question, the appellants-defendants stood seriously prejudiced and no findings as regards the authenticity of the Will in question ought to have been returned in the absence of specific issue.
8. I have considered the aforesaid submission.
9. In the present case, a comprehensive issue regarding entitlement of the respondents-plaintiffs for the relief of joint possession had been framed. The parties led evidence being fully aware of the case they had to meet. It is the appellants-defendants who in their written statement have set up the case of Will in their favour. In fact the entire case of appellants-defendants is based on Will by Ajmer Singh in their favour. Thus, they can not plead to have been taken by surprise as regards Will. The appellants-defendants have led evidence as regards the factum of establishment of Will and had also examined one of the attesting witnesses. In these circumstances, it cannot be said that the defendants stood prejudiced in any manner on account of non-

framing of a specific issue regarding execution of Will. The above raised submissions, being devoid of merits is repelled.

10. As regards the factum of execution of Will in question, DW-3 Tarlok Singh had stepped into the witness box and his examination-in-chief had been recorded but for the reasons best known to the defendants he was never produced for his cross-examination. A statement of a witness bereft of cross-examination is an incomplete statement and cannot be relied upon. No other witness to establish the factum of execution of the Will has been examined by the defendants.
11. In these circumstances, I do not find any infirmity in the findings of the lower Court and as also affirmed by the lower Appellate Court to the effect that the defendants had been unable to establish the factum of execution of Will.
12. Consequently, the findings returned by the lower Courts on issues No.1 and 2 can not be said to be suffering from any infirmity and the same are hereby affirmed.
13. Finding no merit in the appeal, the same is hereby dismissed.

May 11, 2018
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No