

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-3177-2018 (O&M)
Date of Decision: 13.09.2018

Balbir Singh & another

--Appellants

Versus

Gurbachan Singh & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Bhupesh Dogra, Advocate for the appellants.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiffs-appellants are in second appeal before this Court having remained unsuccessful before both the courts below.

Brief facts of the case are that the appellants instituted a suit for possession by way of partition and permanent injunction on the pleadings that the suit property was owned by Waryam Singh, grandfather of the plaintiffs and predecessor in interest of the defendants/respondents. It was asserted that Waryam Singh had executed a registered Will dated 17.9.1976 bequeathing his entire estate including the suit property in favour of his sons namely Gian, Mikkar Singh, Karam Singh and grandson Gurbachan Singh. Plaintiffs-appellants are the sons of Mikkar Singh. Waryam Singh is stated to have died in the year 1978 and on the basis of the Will, parties to the suit became joint owners in joint possession of the suit property. Mikkar Singh is stated to have executed a registered Will dated 9.8.2000 in favour of the plaintiffs-appellants. Mikkar Singh is stated to have died leaving behind his two sons i.e. the plaintiffs-appellants, two daughters and widow Maha Kaur. Maha Kaur is also stated to have expired. Under such circumstance it was claimed that after the death of Mikkar Singh, his estate was inherited by the plaintiffs-appellants and Maha Kaur. After demise of

Maha Kaur her share had also devolved upon the plaintiffs-appellants. It was asserted that the suit property is still in joint ownership but there remains a dispute between the parties and accordingly a suit for possession by way of partition. Consequential relief of permanent injunction was also sought restraining the defendants from raising any type of construction and changing the nature of the suit property.

Notice having been issued, suit was contested by defendants no.1, 3, 7 and 16 whereas the other remaining defendants were proceeded ex-parte. Stand was taken that Waryam Singh never remained owner of the property and as such, the question of executing any Will by Waryam Singh regarding property in dispute did not arise. The contesting defendants asserted that the Will dated 17.9.1976 of Waryam Singh set up by the plaintiffs was forged, false and fabricated.

Suit of the plaintiffs was dismissed by the Trial Court on 11.11.2016 and even a civil appeal preferred has met the same fate vide judgement dated 20.12.2017 passed by the learned Additional District Judge, Jalandhar.

Learned counsel representing the appellants would contend that the courts below have returned perverse findings. It is contended that an application filed under Order 41 Rule 27 CPC filed before the Lower Appellate Court for adducing additional evidence in the shape of registered Will dated 17.9.1976 executed by Waryam Singh and Will dated 16.8.2000 by Mikkar Singh has been wrongly dismissed. It is urged that such documents were necessary for the just decision of the appeal and ought to have been allowed. Further submitted that the appellants were illiterate persons and even if certain wrong dates as regards the Will in question had

been mentioned in the plaint, it was on account of the wrong advise given by the counsel and for which the appellants could not have been penalized.

Counsel for the appellants has been heard at length and the pleadings on record have been perused.

Undoubtedly, the plaintiffs-appellants had filed an application under Order 41 Rule 27 CPC for adducing additional evidence i.e. to produce registered Will dated 17.9.1976 executed by Waryam Singh and Will dated 16.8.2000 executed by Mikkar Singh in favour of his sons i.e. the appellants herein. However, as per plaint, the plaintiffs-appellants had claimed that Waryam Singh had executed the Will dated 17.9.1976 and Mikkar Singh having executed registered Will dated 9.8.2000. Under such circumstances the Lower Appellate Court has rightfully dismissed the application under Order 41 Rule 27 CPC by observing that the documents sought to be brought on file by way of additional evidence were not even subject matter of the suit and as such, were not necessary for the just decision of the appeal.

The material aspect that has weighed with this Court in declining to interfere in the instant second appeal is that counsel has not been able to controvert that no cogent evidence had been led by the plaintiffs-appellants to prove that Waryam Singh was owner of any part of the suit property. This being the situation, the question of inheritance of the suit property by father of the appellants namely Mikkar Singh vide Will dated 17.9.1976 does not even arise. Even otherwise, the Will dated 17.9.1976 stated to have been executed by Waryam Singh in favour of his sons/grandsons including Mikkar Singh, father of the appellants was never produced on file nor was it proved in accordance with law by examining at

least one of the attesting witnesses as per requirement of Section 63 of the Succession Act and Section 68 of the Evidence Act.

In the considered view of this Court, the impugned judgements declining relief of possession by way of partition are based on due appreciation of evidence and by adopting valid and cogent reasoning.

The instant appeal is accompanied by an application i.e. CM-8304-C-2018 under Section 5 of the Limitation Act seeking condonation of delay of 43 days in filing the main appeal.

Applicant was required to explain each day of delay that has occurred. No such justification is forthcoming. The application has been filed by citing routine grounds. Prayer for condonation, as such, is declined.

In view of the above, the instant appeal is dismissed on merits as well as on the ground of delay.

(TEJINDER SINGH DHINDSA)
JUDGE

13.09.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No