

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4279 of 2017(O&M)

Date of Decision: 9.5.2018

Baljit Kaur and another

---Appellants

versus

Chainchal Singh

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.C.S.Jattana Advocate
for the appellants**

Rekha Mittal, J.

CM No.11107-C of 2017

Prayer in this application is for condoning delay of 81 days in filing the appeal.

In view of averments made in the application and arguments advanced, application is allowed and delay of 81 days in filing the appeal stands condoned.

Disposed of accordingly.

Main case

The present appeal directs challenge against consistent findings recorded by the Courts whereby suit filed by the respondent-plaintiff for declaration that he is owner in possession of land measuring 13 bigha and 7 biswas, detailed in head note of the plaint on the basis of Will dated 11.7.2008 purported to be executed by Sh. Jagir Singh son of Sh. Inder Singh in favour of the respondent and to set aside mutation No. 9129 sanctioned on the basis of natural succession to Sh. Jagir Singh, was

decreed by the trial court and findings recorded by the trial court have been affirmed in appeal filed by the unsuccessful defendants/appellants before the District Judge, Ludhiana.

The respondent-plaintiff sought exclusion of the appellants from inheritance on the basis of testamentary succession by propounding Will dated 11.7.2008. There is no dispute between the parties that Sh. Jagir Singh was married to Surjit Kaur and out of the said wedlock, Chainchal Singh plaintiff-respondent was born. After death of Surjit Kaur, Jagir Singh contracted second marriage with Jasmail Kaur and out of that wedlock, two daughters namely Baljit Kaur and Baldev Kaur, appellants herein were born. Unfortunately, Jasmail Kaur also died during life time of Jagir Singh. As per plea of the respondent/plaintiff, he migrated to Canada and settled there. He called his sisters there and solemnized their marriage. The appellants are well settled in Canada and leading a happy married life whereas Jagir Singh was being looked after and served by the respondent-plaintiff. Out of love and affection, Jagir Singh executed the Will in question in his sound disposing mind in presence of Gurpreet Singh Minhas and Mohan Singh Johal at Canada. Jagir Singh died on 9.1.2009 and his last rites were performed by the plaintiff.

The sole submission made by counsel for the appellants is that the respondent-plaintiff instituted the suit through his attorney Kewal Singh on 20.8.2009 but the power of attorney in favour of Kewal Singh was executed on 8.9.2009, therefore, the suit is not maintainable.

Be that as it may, it is undisputed position of the case that Chainchal Singh appeared as his own witness and reiterated that Kewal Singh was authorized to file the suit on his behalf. He has also admitted

execution of power of attorney in favour of Kewal Singh. In the given scenario, acts done by the attorney on behalf of the plaintiff are duly ratified, therefore, judgments passed by the courts cannot be set aside on the ground that power of attorney in writing was executed subsequent to institution of the suit. At best, the suit filed by the respondent through his attorney is to be treated as validly instituted with effect from the date, the power of attorney was executed on 8.9.2009.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. The judgments and decrees passed by the courts are affirmed. No order as to costs.

(Rekha Mittal)
Judge

9.5.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No