

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5102 of 2017 (O&M)

Date of Decision: November 12, 2018

Kapoor Kaur

...Appellant

Versus

Mohar Singh (deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sarabjit Singh Grewal, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.13558-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 4 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.5102 of 2017

Appellant-defendant has not been successful in defending the appeal before the Lower Appellate Court, whereby the judgment and decree dated 21.08.2015 of the trial court dismissing the suit of the respondent-plaintiffs has been set-aside, in essence the suit seeking declaration and permanent injunction, has been decreed.

Respondent-plaintiffs instituted the aforementioned suit by averring that Sant Kaur was owner in possession of 3/7 share in the land measuring 166 kanals 2 marlas. During her life time, she executed a registered Will dated 28.11.1985 bequeathing her entire property in their favour, but the defendants wanted to interfere and obtained the mutation on the basis of the natural succession.

The defendants opposed the aforementioned suit by asserting that the suit was barred by law of limitation and disputed the genuineness of the Will. It was alleged that Sant Kaur was 90 years old at the time of her death and was not keeping good health for last ten years. Her eye sight was weak and she was also hard of hearing. Defendant No.2 was proceeded ex-parte.

Plaintiffs, in support of their case, examined five witnesses and brought on record documents Ex.P1 to Ex.P5.

The trial court, on the preponderance of the evidence, dismissed the suit, but the Lower Appellate Court reversed the findings.

Mr. Sarabjit Singh Grewal, learned counsel representing the appellant-defendant No.1 submitted that the Lower Appellate Court abdicated in reversing the well reasoned findings of the trial Court as the suit was, *ex-facie*, barred by law of limitation, for, having filed on 16.07.2011, whereas the mutation was sanctioned in 1996. It has not been proved on record whether Sant Kaur had actually executed the Will, thus, mutation on the basis of natural succession, was correct approach. Will was surrounded by suspicious circumstances as no reasons were assigned in disinheriting the defendants being daughters.

I am afraid, the aforementioned argument is not sustainable as it is settled law that there is no limitation in case of suit for possession on the basis of inheritance. The aforementioned view of mine is derived from the ratio decidendi culled by the Division Bench of this Court in **Mohinder Singh (died) and Rep.by his L.Rs and another Versus Kashmira Singh, 1985 PLJ 82 (Paras 5 & 6).**

Coming to the second argument. Plaintiff, in order to discharge

the onus, examined Mela Ram PW-2, Scribe of the Will. He stated that in the year 1985, worked as a Deed Writer and acknowledged to have scribed the Will. Non-production of the register cannot be said to be a suspicious ground. To a specific question in the cross-examination, admitted that he personally knew attesting witness Surinder Pal Gupta Advocate, who expired and had appended signatures in his presence and also identified the same. There is no force in the argument as in the cross-examination, it surfaced that the mentioned register was brought. Non-mentioning of the date would not be a ground to discard the Will. Gurchet Singh PW-3 stated that attesting witness Ramji Dass was his father, who expired, but he identified his signatures, therefore, there is compliance of provisions of Sections 68 and 69 of the Indian Evidence Act. PW-4 Ashish Kumar, clerk of the Advocate, had proved the signatures of Surinder Pal Gupta. Registered document carries a presumption of truth. If at all, the defendants had any suspicion, nothing prevented them to seek the assistance of the expert to compare the thumb impressions of the testator with the admitted one. In the absence of such approach, the Lower Appellate Court, in my view, rightly reversed the findings by upholding the Will.

As an upshot of the aforementioned observations, both the arguments aforementioned are hereby negated. Judgment and decree of the Lower Appellate Court is upheld as the same does not suffer from any illegality or perversity. No substantial question of law arises for determination by this Court. Resultantly, the appeal is dismissed.

November 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No