

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

103

RSA-5210-2017 (O & M)
Date of decision :15.02.2018

Vijay Kumar and another

...Appellants

Versus

Pawan Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.S.S. Toor, Advocate
for the appellants.

ANIL KSHETARPAL, J.(Oral)

Defendants No.2 and 3-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs filed a suit for possession by way of partition of the property left by Sh. Pat Ram, predecessor-in-interest.

Defendants in the written statement pleaded that the plaintiffs are not entitled to any share in the property as Sh. Pat Ram had executed a registered Will dated 31.03.1999. Defendants did not lead any evidence to prove the Will in accordance with Sections 68 and 69 of the Evidence Act. Hence, the learned trial Court decreed the suit and a preliminary decree was passed holding that the plaintiffs are entitled to 1/7th share in the property. First appeal preferred was also dismissed.

Now in the second appeal, application under Order 41 Rule 27 CPC has been filed to grant permission to place on record a copy of the registered Will.

In the considered opinion of this Court, the application cannot be

entertained at this stage particularly when the defendants had defended the suit and pleaded about the Will. Defendants have failed to produce the Will in both the Courts below. Defendants were in the knowledge of the document but they did not take any step to produce the Will and prove the same in accordance with Sections 68 and 69 of the Evidence Act.

In view thereof, the application for additional evidence is dismissed.

In view of the discussion made above, there is no ground to interfere.

Still further, the appeal has been re-filed after delay of 1833 days.

In view of the dismissal of the appeal on merits, no further order is required.

Hence regular second appeal is dismissed.

All the miscellaneous applications shall stand disposed of.

15.02.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No