

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

RSA No.5606 of 2017 (O&M)

Date of decision : 09.02.2018

Gurmeet Singh and another

...Appellants

Versus

Paramjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaideep Verma, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.14812-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 03 days in filing the appeal is condoned.

Application is allowed.

CM No.14813-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 31 days in refiling the appeal is condoned.

Application is allowed.

Main case

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs had filed a suit claiming declaration that the

plaintiffs are owners in possession of 1/3rd share of the property left by Late Sh. Jaspal Singh, their father, as the suit property is ancestral, coparcenary and the joint hindu family and they have got the share by birth.

The defendants contested the suit and claimed that Late Sh. Jaspal Singh had executed a registered Will dated 31.12.1998 in their favour bequeathing the suit property. It may be significant to note that the defendants in the present case are widow and sons of Jaspal Singh. It is admitted position on the record that Jaspal Singh married twice during his lifetime. From first wife, the plaintiffs were born whereas from second wife (defendant No.3), defendant Nos.1 and 2 were born.

The defendants further pleaded that in fact the mother of the plaintiffs namely Swaran Kaur had separated and a decree of divorce was passed and her rights were settled by Jaspal Singh, at the time of the divorce.

Both the Courts below on appreciation of the evidence have recorded the concurrent findings of fact that the plaintiffs have failed to prove that the property was either ancestral or coparcenary or joint hindu family property. In order to prove the ancestral nature of the property, the plaintiffs have examined the Special Kanungo, who is alleged to have prepared an excerpt. However, when he was asked to bring the original record, he failed to bring the record in the Court. Special Kanungo admitted that he does not know urdu language and the translation has been carried out by someone else.

Learned counsel for the appellants has vehemently argued that a person who carried out the translation i.e. Sardool Singh was examined as

PW3. He submits that the deficiency, if any, left by Special Kanungo was fulfilled by the Translator. However, in the present case, it is admitted position on the record that while producing the excerpt, Special Kanungo did not bring the original record, on the basis whereof, the excerpt was prepared. Special Kanungo was given opportunity to bring the record but he failed to bring the original record. Hence, the Courts have recorded a finding that excerpt cannot be said to be proved in absence of the original record having been produced before the Court. In the present case, the defendants have proved the registered Will by examining the attesting witness, although there was no issue on the Will.

Taking into consideration the aforesaid facts and the concurrent findings of fact arrived at by both the Courts below, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in terms of the abovesaid judgment.

09.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No