

RSA Nos.1762 & 2342 of 2012 (O&M)

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

Date of decision : 06.05.2019

1.

RSA-1762-2012 (O&M)

Sangeeta and another

... Appellants

Versus

Nirmala Devi and others

... Respondents

2.

RSA-2342-2012 (O&M)

Vikram @ Bikram and another

... Appellants

Versus

Nirmala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. G.S. Gopera, Advocate and
Ms. Neha Anand Mahajan, Advocate
for the appellants in RSA No.1762 of 2012 and
for respondent Nos.1 to 3 in RSA No.2342 of 2012.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shiv Kumar Sharma, Advocate
for the appellants in RSA No.2342 of 2012 and
for respondent No.3 in RSA No.1762 of 2012.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals,
aforementioned.

A very anomalous situation has arisen in the appeals regarding
the devolution of the estate of Dablr Singh, who alleged to have married
twice and propoundation of a Will dated 27.10.1997 by the plaintiff in Civil
Suit No.547 of 2000 filed at Gurugram (hereinafter called 'first suit') and

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defendants in Civil Suit No.189 of 2000 filed at Jhajjar (hereinafter called 'second suit'). The Jhajjar Court has upheld the Will and the mutation proceedings, resulting into, dismissal of the second suit, whereas the Gurugram Court, dismissed the first suit. The appeal preferred against the judgment and decree dated 29.07.2010 passed by the Jhajjar Court, was dismissed on merits, hence, RSA No.1762 of 2012, whereas the other appeal preferred by the plaintiffs in first suit and defendants in second suit, was dismissed on the ground of delay of 17 days, therefore, RSA No.2342 of 2012.

Both the parties knew the pendency of the suits, but did not take any steps for consolidation, but availed the remedy, in accordance with law. Had that remedy been availed, the predicament of both the parties would, no longer, have been existing.

Without commenting upon the merits and demerits of the case, as noticed above, two different/divergent view qua the Will *ibid* upheld by Jhajjar Court and rejected by the Gurugram Court, the controversy, in dispute, requires to be revisited by the lower Appellate Court.

Mr. Puneet Jindal, learned Senior Counsel assisted by Mr. G.S. Gopera, learned counsel appearing on behalf of the plaintiffs in second suit and defendants in first suit, submitted that in such circumstances, the matter can be decided by the Court at Gurugram, whereas Dr. Anmol Rattan Sidhu, learned Senior Counsel assisted by Mr. Shiv Kumar, learned counsel appearing on behalf of the plaintiff in the first suit and defendant Nos.3 & 4, in second suit, at Jhajjar Court as the Courts there have lesser burden of work than that of Gurugram.

It is a matter of record that both the parties are resident of

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Gurugram and New Delhi.

In such circumstances, I am of the view that the lower Appellate Court at Gurugram would be appropriate one for adjudication of the *lis*.

Since the civil appeal No.29 of 2010 was dismissed on the ground of delay of 17 days, I am of the view that the plaintiffs have been deprived of the right of adjudication, in view of the provisions of Section 96 of the Code of Civil Procedure, on merits, accordingly, the delay of 17 days is condoned.

Keeping in view the aforementioned facts, the judgments and decrees, under challenge, are set aside and both the appeals i.e. Appeal Nos.27 & 29 of 2010, will be decided by the lower Appellate Court at Gurugram, either by the District Judge or Additional District Judge, in accordance with law, as expeditiously as possible preferably within a period of one year from the date of receipt of the certified copy of the order.

The parties or through their counsel are directed to appear before the District Judge, Gurugram on 27.05.2019.

Till the decision of the appeals, both the parties to the *lis* shall not create third party rights.

With the aforesaid observations, the second appeals are disposed of.

06.05.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**