

RSA-6498-2016 (O&M)

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

**RSA-6498-2016 (O&M)
Date of decision : 17.01.2019**

Charanjit Singh

... Appellant

Versus

Apjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Randhawa, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

CM-17015-C-2016

For the reasons stated in the application, the delay of 92 days in
refiling the appeal is condoned.

CM stands disposed of.

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The present regular second appeal is directed against allowing
of the application for preparation of the final decree, at the instance of the
decree holder.

It was alleged that the suit land measuring 3 kanals 8 marals
was mortgaged with the Punjab and Sind Bank for a sum of ₹4,00,000/- and
on account of non-payment of the loan amount, the suit property of the
mortgagor was put to auction. The appellant-defendant purchased the
property in auction. The suit for rendition of accounts and mense profits
was filed by Amrit Kaur, one of the co-sharer. The preliminary decree, on
12.05.1997, was passed, whereby the plaintiff-decree holder was entitled to
rent qua 1/3rd and 2/3rd to the amount of ₹36,192/- and ₹38,320/- along with
interest and penal interest, respectively. In the meantime, Amrit Kaur had

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died in the month of June 1994. Apjit Singh son of Amrit Kaur filed an application claiming himself to be sole legal heir on the basis of the testamentary document of Amrit Kaur.

Learned counsel for the appellant-judgment debtor submitted that the status of the defendant in the suit property was of a co-sharer as the Will amongst the siblings and children of Amrit Kaur had already been challenged and the matter had reached upto this Court. Apjit Singh cannot stake to entire claim, thus, in such circumstances, in the absence of any decision in the regular second appeal, cannot be permitted to receive the entire share of Amrit Kaur.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, the other co-sharer would not have any objection as they have complied with preliminary decree dated 12.05.1997, which has attained finality. Whatever would be the outcome of the decision in the pending regular second appeal with regard to the Will, either acceptance or rejection, the suit would be regarding proportion of the amount amongst the beneficiaries of the Will or on the basis of the intestate. The apprehension expressed is, thus, far fetched.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

17.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**