

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

RSA-384-2014 (O&M)

Date of decision: 10.12.2019

Rajbir Kaur and others

...Appellants

Versus

Balbir Singh Sandhu and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. H.S. Bhullar, Advocate for the appellants.

Mr. Vikas Bahl, Sr. Advocate with
Ms. Priyanka Kansal, Advocate
for respondents No. 1 to 10.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Rajbir Kaur-daughter and Joginder Pal Singh Sandhu-son of Sh. Darshan Singh Sandhu, besides one Gurdeep Chahal, all residents of Canada had brought a suit against Balbir Singh Sandhu, Surinder Pal Singh Sandhu, Sarbjeet Singh Sandhu, sons and Jagdeep Kaur Goraya, Kanwaljeet Kaur Dhaliwal-daughters and Smt. Bakshish Kaur, wife of Sh. Darshan Singh Sandhu as well as six others, seeking a declaration that mutation sanctioned vide No.1738 dated 09.03.1999 by Assistant Collector, Amritsar in respect of agricultural land, situated in the revenue estate of Village Bhakna Khurd, Tehsil &

District Amritsar with regard to the inheritance of late Sh. Darshan Singh Sandhu is null and void and is a result of fraud and forgery and is ineffective qua the rights of the plaintiffs and other LRs of Sh. Darshan Singh Sandhu and said mutation is liable to be sanctioned on the basis of Will dated 22.05.1996 and further the mortgage deed executed by Balbir Singh Sandhu and Surinder Pal Singh Sandhu-defendants on 03.04.2000 in favour of Gurpreet Singh, Ravinder Singh, Balwinder Singh and Harpal Singh-defendants for 49K-5M and 24K-2M of land situated at Village Bhakna Khurd, Tehsil & District Amritsar, fully detailed in the headnote of the plaint as well as mutation No.1738 dated 09.03.1999 on the basis of Will dated 12.08.1998 are null and void. In addition to that, the plaintiffs have sought partition and separate possession of $\frac{1}{4}$ share of land jointly owned by Joginderpal Singh-plaintiff and defendants No.1 to 3, holding that mortgaging of 41K-14M out of it by mentioning specific khasra numbers is null and void. In addition to that, plaintiffs have sought decree for permanent injunction, restraining defendants No.7 to 10 from taking possession and cultivating specific khasra numbers of land measuring 41K-14M having been mortgaged by defendants No.1 & 2 illegally and wrongly and further restraining defendants No.11 & 12 from handing over the possession of land measuring 41K-14M, 49K-5M and 24K-2M from defendants No.7 to 10. In the alternative, plaintiffs have sought possession of

land measuring 49K-5M and 24K-2M from defendants No.7 to 12 and sought recovery of arrears of rent/lease money as well as mesne profits for use and illegal occupation of land measuring 73K-7M.

As per version of the plaintiffs, Sh. Darshan Singh Sandhu son of Sh. Balwant Singh was owner of the landed property, situated at Village Bhakna Khurd, Tehsil & District Amritsar. Sh. Darshan Singh Sandhu had gone to Canada and settled there. He died on 05.01.1999 and is survived by his four sons, namely, Balbir Singh (defendant No.1), Surinder Pal Singh (defendant No.2), Sarbjeet Singh (defendant No.3), Joginder Pal Singh (plaintiff No.3) and three daughters, namely, Rajbir Kaur (plaintiff No.1), Kanwaljeet Kaur (defendant No.5), Jagdeep Kaur (defendant No.4), besides a widow namely Bakshish Kaur (defendant No.6). During his life time, Sh. Darshan Singh Sandhu had executed a Will dated 22.05.1996, vide which, he had bequeathed all his properties in favour of Gurdip Singh Chahal (plaintiff No.2). The existence of Will was notified to all the LRs by the Executor/trustee by writing a letter dated 13.03.1999. On 31.03.2000, plaintiff No.2 moved an application before Tehsildar, Amritsar for sanctioning of mutation of agricultural land on the basis of Will dated 22.05.1996 in his favour. At that time, plaintiffs came to know that defendants No.1 & 2 had got sanctioned mutation No.1738 dated 09.03.1999 illegally on the basis of a Will and they were trying to mortgage the property of Sh. Darshan Singh

Sandhu deceased to some persons. The plaintiffs moved an application before Sub Registrar, to stop the attestation of mortgage deed. They also raised a plea that Sh. Darshan Singh Sandhu had executed a Will dated 22.05.1996 only, as such, defendants No.1 & 2 have no right to mortgage property but the Sub Registrar did not accept the plea and attested the mortgage deed illegally. According to the plaintiffs, the mortgage of land in favour of defendants No.7 to 10 is illegal. Defendants No.1 & 2 have no right to hand over the property in dispute to defendants No.7 to 10. The plaintiffs had filed the appeal, challenging the mutation No.1738 which is pending adjudication before Sub Divisional Officer, Amritsar. The plaintiffs had also filed a petition for reviewing the order sanctioning mutation No.1738 dated 09.03.1999. Since the Will dated 22.05.1996 is in favour of plaintiff No.2, therefore, he is entitled to claim lease money from defendants No.11 & 12 for the year 2000 @ Rs.7000/- per acre for area 146K-14M, which comes to the tune of Rs.60,780/-, after deducting the amount of Rs.1,95,000/- which has already been paid by defendants No.11 & 12. The plaintiffs are also entitled for mesne profits for an area 73K-7M from defendants No.7 to 10 @ Rs.7000/- per acre, amounting to Rs.63,945/-, besides seeking recovery of mesne profits. The plaintiffs prayed that their suit be decreed.

On getting notice, defendants No.1, 2 and 7 to 10 appeared and filed written statements, contesting the suit. The

plaintiffs had withdrawn the suit against defendant No.4, whereas, the remaining defendants were ordered to be proceeded against ex parte. Although, LR's of defendant No.10 had filed a separate written statement but it is on the similar lines as filed by defendants No.1, 2 and 7 to 9. The contesting defendants had raised various legal objections with regard to maintainability of the suit, locus standi of the plaintiffs to bring the same; the suit being bad for non joinder of necessary parties; suit not properly valued for the purpose of Court fee and jurisdiction; the plaintiffs being estopped by their act and conduct to file the present suit; the plaintiffs having concealed material facts from the Court. According to the defendants, the property in dispute is a coparcenary property, in which defendants No.1 & 2 are coparceners. On merits, the defendants admitted relationship of parties as alleged in the plaint and the land in dispute was previously owned by Sh. Darshan Singh Sandhu father of defendants No.1 & 2. According to the defendants, the property in question was not self acquired property of Sh. Darshan Singh Sandhu, rather, he had inherited the same from his fore-fathers. The answering defendants admitted the execution of mortgage deeds, though, denied the execution of power of attorney by the plaintiffs in favour of Sandeep Sharma and execution of Will dated 22.05.1996 by Sh. Darshan Singh Sandhu in favour of plaintiff No.2. As per version of defendants, on 12.09.1998, Darshan Singh had executed a

valid Will in his sound disposing mind in favour of four sons, who are plaintiff No.3 and defendants No.1 to 3 in the suit; that mutation No.1738 dated 09.03.1999 was illegally and validly incorporated in the revenue record on the basis of Will. The defendants denied that plaintiffs have moved any application for challenging the mutation No.1738 or that defendants No.11 & 12 are in possession of the land as lessees paying lease money to plaintiff No.2 @ Rs.7000/- per acre. According to the defendants, the possession of the land was handed over by defendants No.1 & 2 on execution of mortgage deeds by those defendants in favour of defendants No.7 to 10 and since then, defendants No.7 to 10 are in possession of property in dispute being its mortgagers with possession. Such defendants denied the remaining assertions and prayed for dismissal of the suit.

On pleadings of the parties, the following issues were framed:-

1. Whether Darshan Singh (deceased) executed a legal and valid Will dated 22.05.1996 in favour of his legal heirs? OPP.
2. Whether plaintiffs are entitled for possession of land measuring 49K-5M and 24K-2M from defendants No.7 to 12?OPP.
3. Whether the plaintiffs are entitled to recover the arrears of rent/lease money as well as mesne profits of the land measuring 73K-7M as prayed for? OPP.
4. Whether the property in dispute is coparcenary property?

OPD.

5. Whether Darshan Singh (deceased) executed a legal and valid Will dated 12.08.1998 in favour of his sons only?

OPD.

6. Whether the defendants are trying to transfer the possession of suit property illegally? OPP.

7. Whether the suit is not maintainable? OPD

8. Whether the plaintiffs have no locus standi to file present suit? OPD.

9. Whether the suit is bad for non-joinder of necessary parties? OPD.

10. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD.

11. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD

12. Whether the Civil Court has got no jurisdiction to try and entertain the present suit? OPD

13. Relief.

In support of their case, plaintiff Rajbir Kaur herself appeared as PW1 besides examining Smt. Veena Kumari, Addl. HRC Office of DC as PW2, Gurdip Singh Chahal as PW3 and after tendering some documents, closed their evidence.

In rebuttal, defendants examined Arvinder Singh, Ahlmad to the Court of D.C. Amritsar as DW1, Amarjit Singh Waraich as DW2, Surinder Pal Singh as DW3 and thereafter closed their evidence.

After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Amritsar, dismissed the suit of the plaintiffs, vide judgment and decree dated 14.01.2006.

The plaintiffs felt aggrieved by the dismissal of their suit by the trial Court and preferred an appeal before District Judge, Amritsar, which was assigned to Addl. District Judge, Amritsar, who vide judgment and decree dated 19.12.2011, dismissed the appeal, affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied, the plaintiffs have knocked at door of this Court, by way of filing the present Regular Second Appeal, notice of which was given to the respondents. Respondents No.1 to 10 have put in appearance to offer a contest.

I have heard learned counsel for the parties besides going through the record.

The trial Court had rejected the claim of plaintiffs for the following reasons:-

- ❖ Will dated 22.05.1996 set up by the plaintiffs was not proved in accordance with law, since, none of the attesting witnesses of the Will was examined.
- ❖ Deposition of Gurdeep Singh Chahal-plaintiff No.2 was not treated as that of attesting witness, since, he happened to be beneficiary of the Will and had actively participated in its execution.

- ❖ The deceased/testator at the time of execution of Will was hospitalized. His signatures on the Will are quite shaky.
- ❖ Original Will had also not been placed on record and only its copy was exhibited.
- ❖ No permission of the Court was taken to lead secondary evidence of the Will. Since requirement of Section 68 of the Indian Evidence Act for proof of the Will by examining at least one attesting witness was not fulfilled and Will was surrounded by suspicious circumstances, which the propounder failed to dispel.
- ❖ It was concluded that the plaintiffs had been unable to prove that Darshan Singh Sandhu had executed a legal and valid Will dated 22.05.1996. In view of the admission by the defendants and the revenue record available on record, it was observed that property in hands of Darshan Singh Sandhu was coparcenary property, in which, he and his sons had a right being coparceners.
- ❖ Defendants No.1 & 2 had successfully established that Darshan Singh Sandhu had executed a Will on 12.09.1998 in favour of his four sons. To prove its execution, they had examined Sh. Amarjit Singh Waraich, one of the attesting witnesses.

Certified copy of Will was placed on record as

Ex.D1. Original Will which was filed during mutation proceedings had been summoned in the Court during trial.

- ❖ The propounder had successfully explained whatever suspicious circumstances were there surrounding the Will. Since the total area owned by Darshan Singh Sandhu in two khewats came out to 148K-11M, in which defendants No.1 & 2 had $\frac{1}{2}$ share, therefore, such defendants were found competent to mortgage land upto their $\frac{1}{2}$ share.
- ❖ The plaintiffs had sought relief with regard to the land measuring 73K-7M i.e. 49K-5M in khewat No.242 and 24K-2M in khewat No.128, which was less than $\frac{1}{2}$ share of defendants No.1 & 2 in those two khewats. Therefore, it could not be said that defendants No.1 & 2 had mortgaged land in excess of their share. As such, plaintiffs were not entitled to recover mesne profits from them, since possession of mortgaged land was already with defendants No.7 to 10. Therefore, there was no occasion for them to try to obtain forcible possession.
- ❖ The plaintiffs could not claim partition of agricultural land from the Civil Court in view of bar created by Section 158 of the Punjab Land Revenue Act.

The first Appellate Court was in agreement with the trial

on all such aspects.

The judgments passed by the Courts below are quite detailed, well reasoned and do not appear to be suffering from any illegality or infirmity.

Further, the appeal was filed belatedly by 550 days. An application under Section 5 of the Limitation Act seeking condonation of delay has been filed for the reason that all the applicants/appellants are settled in Canada and they did not visit India at the time of announcement of judgment by the first Appellate Court or even thereafter, because of their personal problems. Rajbir Kaur applicant is a widow and is supporting her family; Gurdip Singh Chahal is a Barrister and Solicitor and Notary Public settled at Winnipeg and because of professional limitation, he did not visit India; Joginder Pal Singh Sandhu applicant is also earning livelihood for his family. The job of filing the appeal was assigned to Rajbir Kaur applicant but she personally could not do anything. She through her friend Paramjit Kaur who came to India, instructed the counsel to file the appeal and she did so by making the papers available to him and fulfilling other requirements on 08.10.2013 and appeal was filed on 10.10.2013 after drafting by the counsel.

The application is being resisted by respondents No.1 to 10, contending that no cogent or convincing reason for condonation of huge delay in filing of the appeal has been explained. It was duty

of the appellants to pursue their case and even, as per their own version, they approached their counsel only after 21 months from the date of receipt of certified copy of the order dated 19.12.2011. The delay has not been even remotely explained and no sufficient cause is there for condonation of delay as per law laid down by Hon'ble Supreme Court in **Office of Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. 2012 AIR (SC) 1506.**

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

In the instant case, the appellants have been unable to satisfy the Court that they had sufficient cause for not preferring an appeal within time. The explanation rendered is quite vague, which is not found to be convincing. Although in a civil case the presence of litigants is not required but every litigant is expected to pursue the matter properly and keep in regular touch with his/her counsel, rather than sitting pretty at home for years together not bothering to know the progress made in the proceedings and fate of the case.

The delay in this case is of more than 550 days i.e. 18 months approx. No satisfactory or plausible explanation has been rendered, which might have been taken into consideration to condone the delay. No doubt small delay in filing of appeal running into days or a few months can be condoned in the interest of justice but condoning delay of years together without there being any cogent and convincing explanation would amount to nullifying Section 3 of the Limitation Act, which is not called for. The Apex Court in judgment **P.K. Ramachandran Versus State of Kerala, 1998 AIR (SC) 2276**, a case where delay of 565 days was condoned by the High Court in filing of the appeal for the reason that at the time Advocate General's office was fed up with many Arbitration matters equally important, had observed as under:

“5. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.”

No cogent, convincing or genuine reason is there to

condone the gross inordinate delay in filing the appeal. The appeal is obviously time barred and without any merit, therefore, the same stands dismissed for the said reason.

10.12.2019
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No