

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

**RSA No.2194 of 2017 (O&M)
Date of Decision.14.05.2019**

Jasbir Singh and others

...Appellants

Vs

Malkiat Singh (deceased through LRs) and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Kashmir Singh, Advocate &
Mr. Sarthak Gupta, Advocate
for the appellants.

Mr. G.S. Nagra, Advocate
for the caveator-respondent No.1.

-.-

AMIT RAWAL J. (ORAL)

C.M. No.5334-C of 2017

For the reasons stated in the application, delay of 163
days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.2194 of 2017

The appellants-plaintiffs disgruntled children and grand
children of Amarjit Kaur, whose estate is involved in the present case,
filed the suit in 2004 for declaration claiming 1/6th share out of land
measuring 9 bighas 16 biswas including a house. It was alleged that
Amarjit Kaur, mother and grand mother of plaintiffs, wife of
defendant No.1 and mother of defendant No.2, owned the
aforementioned land. She had five sons, one son pre-deceased her.
During her life time allegedly executed a registered Will dated
5.7.1992 bequeathing her share in favour of her husband Malkiat

Singh, defendant No.1. She died on 8.9.1992. The Will was a forged and fabricated document, therefore, she deemed to have died intestate.

Respondents-defendants opposed the suit and alleged that the Will was scribed by none else but Manjit Singh and the plaintiffs and other persons before the revenue court for the purpose of effecting mutation in 1992 had sworn an affidavit giving no objection. Malkiat Singh during his life time gifted the property in favour of defendant No.2, Harnek Singh.

Both the parties led extensive evidence.

The trial Court dismissed the suit which was upheld by the lower Appellate Court.

Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. Kashmir Singh, learned counsel appearing for the appellants-plaintiffs submitted that onus is always on the propounder of the Will. Harnek Singh, defendant No.2 did not depose in terms of provisions of Section 63(c) of the Indian Succession Act. Sadhu Singh other attesting witness filed an affidavit in examination-in-chief but did not appear for cross-examination. The Will was unregistered. Affidavit in the mutation proceedings did not carry any presumption of truth. There is no limitation qua asserting right on the basis of title.

I am afraid aforementioned argument would not be sustainable as the Will is scribed by none else but plaintiff No.3 Manjit Singh and other plaintiffs were also present. All of them have sworn affidavit Ex.DW1/B giving no objection qua mutation of the aforementioned property in favour of father, Malkiat Singh. No

effort has been made to belie the thumb impression/signatures on affidavit. Plaintiffs cannot target their grandfather after thirteen (13) years on account of alleged cause of action. All these factors weighed in the mind of both the Courts below while rendering concurrent finding of fact. Subsequent gift deed by Malkiat Singh was executed by his own volition, which cannot be challenged by plaintiffs.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 14, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No