IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2510 of 2018 (O&M)
Date of Order: 26.02.2019

Ramanpreet Gill and others

..Appellants

Versus

Dinny @ Gurdeep Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sham Lal Bhalla, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Dispute in the present case is with respect to property left by late Sh. Harpal Singh Gill, who died on 07.05.2000. Plaintiff-respondent is daughter from second marriage of late Sh. Harpal Singh Gill with Manvinder Kaur. Such marriage was declared nullity, however, rights of child from a void or voidable marriage are saved under Section 16 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act').

Learned courts below relying upon Section 16 of the Act have decreed the suit qua 1/4th share of the property.

Learned counsel for the appellants has submitted that there is no evidence to the effect that the respondent-plaintiff is daughter of late Sh. Harpal Singh Gill. He has further submitted that on the death of late Sh.

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Harpal Singh Gill, he had left behind 5 Class-I heirs even if plaintiff-respondent is included. Hence, he submitted that decree qua 1/4th share is erroneous.

This court has considered the submissions.

As regard first argument, it may be noticed that the defendants did not lead any evidence to prove that the plaintiff is not daughter of late Sh. Harpal Singh Gill from Manvinder Kaur. The entire emphasis of the defendants was on the fact that the marriage between late Sh. Harpal Singh Gill and Manvinder Kaur was declared nullity vide judgment and decree dated 25.07.1989. As noticed above the decree would not have any adverse affect on the rights of the plaintiff-respondent.

As regard second argument, it may be noticed that mother of late Sh. Harpal Singh Gill, although, alive at the time of death of late Sh. Harpal Singh Gill, succeeds to 1/5th share in the property, however, she has also died. Defendants had pleaded a testament in their favour from Smt. Bhag Wanti, mother of late Sh. Harpal Singh Gill. However, the aforesaid testament has not been proved in accordance with law because none of the attesting witness has been examined.

In view thereof, the courts below have rightly passed a decree in favour of the respondent-plaintiff qua 1/4th share. Hence, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

C.M.No.6628-C-2018

Prayer in this application is for condonation of delay of 146 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by

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an affidavit, the delay of 146 days in re-filing the appeal is condoned.

Application is allowed.

February 26, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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