

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5268 of 2017 (O&M)

Date of Decision: February 27, 2019

Assa Ram alias Assa Singh

...Appellant

Versus

Mehar Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate,
for the appellant.

AMIT RAWAL, J.

The present Regular Second appeal is directed against the concurrent findings of fact, whereby the suit of the appellant-plaintiff claiming possession of the suit property on the premise that the suit land earlier owned by one Gurdial Singh @ Dial Singh son of Bishan Singh, who died on 15.12.1991, has been dismissed.

Plaintiff asserted that he is the son of Dal Singh, real brother of Gurdial Singh and being next legal heir was eligible to inherit the property, but the defendants by forging some papers, played a fraud upon the plaintiff and obtained ownership rights vide mutation on the basis of some unregistered Will which were altogether false, forged and fabricated as Gurdial Singh till his last breath, had been residing with his son Tilak Raj at Ambala.

Defendants opposed the suit and denied the plaintiff to be legal heir of Gurdial Singh as he is stated to have died issueless and bachelor. It was explained that plaintiff, after the death of Gurdial Singh, submitted an

application to the Tehsildar, Kharar for entering the mutation of inheritance in his favour. Mutation No.464 was entered. The same was contested by defendant No.1 on the ground that Gurdial Singh (since deceased) had executed a Will in his favour. Owing to the dispute, mutation matter was remitted to the Assistant Collector Ist Grade, Kharar. Defendant No.1 produced Wills dated 28.10.1988 with regard to house and 26.11.1991 regarding his landed property. As per the Will of 1991, he had given half share of the landed property to defendant No.1 and other half share to defendant No.2, i.e., Gurudwara Sahib. During the pendency of the mutation proceedings, plaintiff entered into a compromise dated 06.12.1993 and admitted the genuineness of the Will recorded in the compromise and accordingly mutation was entered in the name of the defendants on 13.12.1993, but thereafter backed out from the compromise and filed the appeal before the Collector, which was dismissed on 04.07.1994. Revisions before the Commissioner and the Financial Commissioner were also dismissed.

The trial Court framed four issues including issue of relief and thereafter issues No.3A and 3B were framed. The same read thus:-

“1. Whether plaintiff is entitled to the possession of the suit property as prayed for? OPP

2. Whether plaintiff is entitled to declaration as prayed for? OPP

3. Whether suit is not maintainable? OPD

4) Relief.

3A) Whether Gurdial Singh @ Dial Singh executed registered Will dated 28.11.1988 in his sound disposing state of mind in favour of defendant No.1? OPD

3B) Whether Gurdial Singh @ Dial Singh executed unregistered Will dated 26.11.1991 in favour of the

defendants? OPD”

Both the parties led extensive evidence. The suit was dismissed by the trial Court and so was the appeal.

Along with the appeal, an application seeking condonation of delay of 1284 days in filing the appeal has also been filed. The explanation given is that on the decision of the suit, appellant engaged the services of an Advocate to file and pursue the appeal, who assured that he was not required to pursue the appeal. Under the bonafide belief, appellant kept on waiting, but no letter was written. Appellant had been suffering from acute stage of Ashtma, physically unfit to travel to some distance and was under the impression that whenever the appeal would be decided, his counsel would inform him the fate. It is only on 27.03.2017, the plaintiff with the assistance of relative went to the house of Shri Tara Chand Gupta, Advocate, who apprised that the appeal was decided on 11.07.2013. It is in this aspect, delay occurred. The aforementioned explanation, in my view, is bereft of the reasonable explanation, for, the plaintiff cannot be permitted to take defence in awaiting the intimation or call of the counsel. Clients have to be vigilant in pursuing the litigation. Even otherwise, on merits, there is hardly any scope for interference as the plaintiff is stated to have filed a suit for recovery of some amount. In written statement, the defendants not only referred to about the Wills but also regarding the mutation and compromise. The written statement is dated 1997. Despite that, the plaintiff did not lay claim by challenging the Will till filing of the present suit which was filed in 2003. A litigant cannot be permitted to perpetuate illegality and invoke the jurisdiction of the Court according to his own convenience. The rigours of limitation can always be pressed into

service. The alleged suspicious circumstance brought on record, in such circumstances, would pale into insignificance.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on the ground of delay and as well as on merits.

February 27, 2019
ramesh

(AMIT RAWAL)
JUDGE

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