

**C.M.No.4269-C of 2019 in/and
RSA No.5659 of 2017 (O&M)**

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

**C.M.No.4269-C of 2019 in/and
RSA No.5659 of 2017 (O&M)
Date of decision:02.04.2019**

Ramesh Devi

... Appellant

Vs.

Sunita and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sumit Sangwan, Advocate for
Mr. V.P.Sangwan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.4269-C of 2019

For the reasons stated in the application which is duly supported by an affidavit, order dated 14.03.2019 vide which the appeal was dismissed for non-prosecution, is recalled and the appeal is restored to its original number.

C.M. stands allowed.

RSA No.5659 of 2017 (O&M)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff claiming to be owner in possession of land measuring 4 kanal 6 marlas to the extent of 1/5 share out of total land measuring 23 kanals 4 marlas by challenging the Will dated 07.10.2008 executed in favour of defendants

no.1 and 2, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff alleged that Naraini Devi widow of Amar Singh, mother of the parties died on 17.12.2010 intestate and therefore, she was entitled to inherit the estate on account of natural succession to the extent of 1/5th share in the suit property.

The defendants opposed the suit and propounded the registered Will dated 07.10.2008 in favour of defendants no.1 and 2 i.e. two daughters.

The plaintiff in support of the averments examined five witnesses and brought on record the documentary evidence Ex.P1 to Ex.P4, jamabandi and mutation whereas, defendants examined also examined five witnesses including the attesting witness, DW1-Lila Ram, deed writer, DW2-Partap Singh, Namberdar and DW5-Lamxinarain, Tehsildar.

Learned counsel appearing on behalf of the appellant submitted that attesting witness did not depose as per the provisions of Section 63(c) of Indian Succession Act, therefore, could not have been looked into and the suit could have been decreed.

I am afraid the aforementioned argument is not sustainable as no cogent evidence to belie the consistent evidence of the defendants proving the Will, has been rebutted. The Will is always deviation from the line of succession.

The appeal is also accompanied by an application seeking condonation of delay of 139 days in filing the appeal. The explanation given in the application is bereft of the reasoning.

The findings of fact and law cannot be said to be suffering from illegality and perversity. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed on merits as well as on limitation.

April 02, 2019
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No