

RSA No.6319 of 2017 (O&M)

{1}

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

**RSA No.6319 of 2017 (O&M)
Date of decision:13.05.2019**

Amarjit Kaur

... Appellant

Vs.

Daljit Kaur and another

... Respondents

RSA No.6394 of 2017 (O&M)

Amarjit Kaur

... Appellant

Vs.

Daljit Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Inderjeet Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.16449-C of 2017 in RSA No.6319 of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 155 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.16578-C of 2017 in RSA No.6394 of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 146 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.6319 and 6394 of 2017 (O&M)

This order of mine shall dispose of two regular second appeals bearing Nos.6319 and 6394 of 2017.

The appellant-defendant No.1 in both appeals is aggrieved of the adjudication of two suits filed by Daljit Kaur in respect of two properties qua the estate of Jaswant Kaur alleging un-equal distribution.

Jaswant Kaur in 2001 died intestate and therefore, her share was required to be devolved upon the plaintiff-Daljit Kaur and defendants no.1 and 2, being sisters i.e. Amarjit Kaur and Malkit Kaur regarding two properties situated in two different villages. The mutation was effected as per the registered Will no.312 dated 12.02.2001.

The appellant-defendant opposed the suit and stated that she was un-married and therefore, was given more share than her sister, thus, no cause of action arose for the plaintiff to assail the mutation. The objection qua limitation was also taken. Both the parties led extensive evidence.

The appellant-defendant No.1 being propounder of the Will examined only scribe and not the attesting witnesses. The application under Order 41 Rule 27 of the Code of Civil Procedure was also filed before the Lower Appellate Court which was dismissed.

Mr. Inderjeet Sharma, learned counsel appearing on behalf of the appellant-defendant no.1 submitted that though the scribe was sufficient piece of evidence to establish the Will was executed by Jaswant Kaur. The factum of appellant being un-married was not denied. It is a classic case of disgruntlement and thus, the judgments and decrees of the Courts below are

liable to be set aside keeping in view the peculiar facts and circumstances of the case.

I am afraid the aforementioned arguments are not sustainable as the appellant, propounder of the Will has not been able to discharge the onus as per the provisions of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act. Dehor of the fact that Will was registered document. In such circumstance, the devolution of interest as per the natural succession was correct mode which has been conferred upon all as per judgments and decrees of the Courts below.

The arguments of Mr. Sharma, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 13, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No