

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

Sr. No.105

**CM Nos.1109 & 1110-C-2022 in/and
Regular Second Appeal No.427 of 2022
Date of Decision : February 28, 2022**

Beena

...Appellant

Versus

Manoj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ishaan Bhardwaj, Advocate, for the appellant.

SUDHIR MITTAL, J. (ORAL)

CM-1109-C-2022

This application has been filed for condonation of delay of 07 days in filing the appeal.

The application is allowed and delay of 07 days in filing the appeal is condoned.

RSA-427-2022 (O&M)

Respondent No.2 filed a suit for partition, recovery of mesne profits, declaration and permanent injunction. It was his case that the suit property (residential house and six shops on the ground floor) were owned by the father of the parties. Both father and mother had passed away and thus, all sons and daughters being class-I legal heirs were entitled to equal share therein. The trial Court passed a preliminary decree of partition and held that all legal heirs of deceased Than Singh were owners in equal shares. Will dated 07.1.2011 produced by respondent No.1-defendant No.3 was not a genuine document being surrounded by suspicion. The judgment

and decree of the trial Court was challenged by aforementioned respondent No.1-defendant No.3. The First Appellate Court has accepted the appeal and has held that the Will dated 07.01.2011 is a genuine and valid document. Thus, the present Regular Second Appeal has been preferred by defendant No.1.

Learned counsel for the appellant has argued that the First Appellate Court was in error in accepting the validity of Will dated 07.01.2011. The said Will remained in custody of DW-3 (one of the attesting witnesses) for seven years and thus, the trial Court was justified in holding that the Will was surrounded by suspicious circumstances. The scribe has admitted in his cross-examination that he did not see the identity proof of the testator and thus, it cannot be said that late Sh. Than Singh was the testator. The signature of the testator has not been proved by examination of an expert witness. The First Appellate Court has ignored all these issues.

DW-3 is none other than the maternal uncle of the parties. The Will has been produced from his custody. He is also one of the attesting witnesses of the same. The signature thereupon has been compared by the Appellate Court with an admitted signature of the testator and the Appellate Court has returned a finding of fact that the signatures match. DW-3 has also stepped into the witness box to prove the Will. Thus, merely because the Will was produced by DW-3 after seven years of death of the testator does not give rise to any suspicion. Based on late production of the document, the only argument that could be raised was that the said document was a forged document. Forgery has not been found as the

signatures have been found to be of the testator on a bare examination thereof through the naked eye. For this purpose, examination of an expert was not necessary as signatures can always be compared through the naked eye. There is no error in the judgment of the First Appellate Court. The Will has been proved in accordance with law and was bound to be accepted.

Merely because the scribe did not ask for the identity of the testator, it cannot be held that execution of the Will by the testator was not proved. A Will has to be proved by attesting witnesses and not by the scribe.

In view of the above, the appeal has no merit and is dismissed.

CM No.1110-C-2022

Since the main case stands dismissed, the present application is also dismissed.

February 28, 2022
Ankur

(SUDHIR MITTAL)
JUDGE

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