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

**RSA-458-2022 (O&M)
Reserved on : 27.05.2022
Date of Decision : 31.05.2022**

Smt. Sunita Devi

.....Appellant

Versus

Smt. Shalu Devi and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vipin Pal Yadav, Advocate for the appellant.

ALKA SARIN, J.

CM-1231-C-2022

This is an application for condonation of delay of 215 days in re-filing the appeal.

For the reasons stated in the application, the delay of 215 days in re-filing the appeal is condoned.

CM stands disposed off.

CM-1232-C-2022

This is an application for condonation of delay of 2 days in filing the appeal.

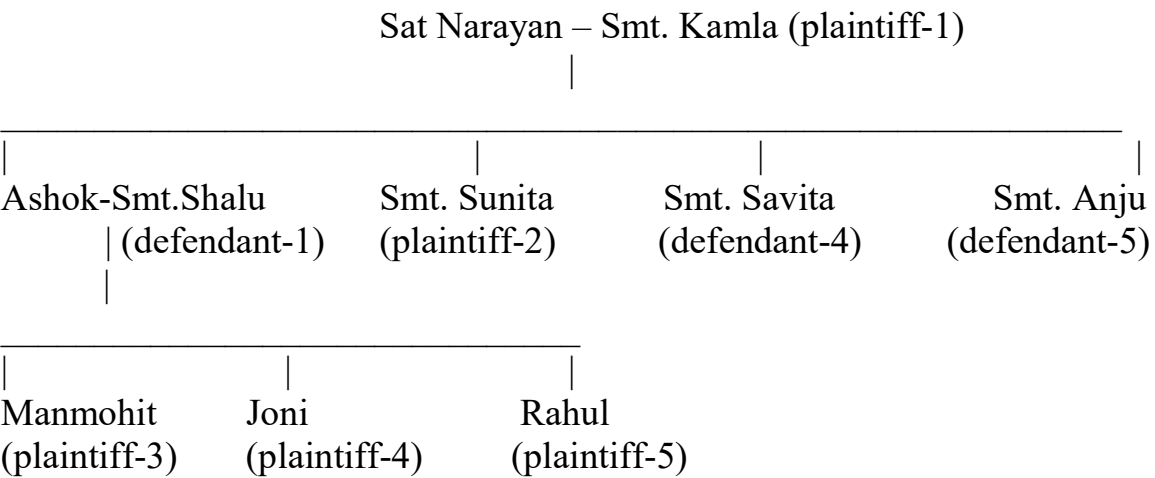
For the reasons stated in the application, the delay of 2 days in filing the appeal is condoned.

CM stands disposed off.

RSA-458-2022

The present regular second appeal has been preferred by the plaintiff No.2-appellant against the judgments and decrees passed by both the Courts below dismissing the suit for declaration filed by her and the plaintiff-proforma respondents.

The dispute is regarding the estate left behind by Sat Narayan after his death. According to the plaintiffs the suit properties are ancestral and they have a share in the same. The defendant No.1 set-up a Will dated 15.01.2002 executed by Sat Narayan which excluded his daughters i.e. plaintiff No.2, defendant Nos.4 and 5. The following pedigree table may be noticed :



According to the plaintiffs, the suit properties were ancestral in the hands of Sat Narayan. Ashok s/o Sat Narayan died on 10.11.2008 and upon his death his share in the suit properties was inherited by the plaintiff Nos.1, 3 to 5 and by defendant no.1. Sat Narayan died on 13.12.2012 and upon his death the plaintiff No.1, 2, 3 to 5 and defendant Nos.1, 4 and 5 succeeded to the suit properties. A declaration qua their rights in the coparcenary and ancestral suit properties was sought in the suit filed by the plaintiffs.

On notice, written statement was filed by the defendant No.1 wherein it was denied that the suit properties left by Sat Narayan are

ancestral and it was submitted that infact the suit properties left by Sat Narayan are his self-acquired properties. It was averred that Sat Narayan had executed a Will dated 15.01.2002 in respect of the suit properties and according to the said Will the shop situated in the Main Bazar, Bahadurgarh was given to the grandsons i.e. plaintiff Nos.3 to 5 in equal shares. The shop situated in Purani Subzi Mandi was given by Sat Narayan to his son Ashok and the residential house was given to his wife i.e. plaintiff No.1 and son Ashok in equal shares and, as such, the daughters of Sat Narayan i.e. plaintiff No.2 and defendant Nos.4 and 5 had got no right and title in the suit properties.

On the pleadings of the parties, the following issues were framed vide order dated 17.07.2010 :

1. Whether the suit property mentioned in prayer para of the plaint are ancestral and co-parcenary property of the plaintiff and proforma defendant ? OPP
2. Whether the plaintiff no.1 is owner in possession to the extent of 6/25 share, plaintiff no.2 & contesting defendants no.4 & 5 are owners in possession to the extent of 1/5th share each and plaintiffs no.3 to 4 and contesting defendant no.1 are owner in possession and coparcener to the extent of 1/25th share each ? OPP
3. Whether the plaintiffs are entitled to the decree for declaration as prayed for on the grounds mentioned in plaint ? OPP

4. Whether the plaintiffs are entitled to the decree for permanent injunction as prayed for on the grounds mentioned in plaint ? OPP
5. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
6. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ? OPD
7. Whether the plaintiffs have no cause of action and locus standi to file the present suit ? OPD
8. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
9. Relief.

The Trial Court, vide judgment and decree dated 29.10.2015, dismissed the suit of the plaintiffs holding that the plaintiffs had failed to prove the nature of property as ancestral in hands of Sat Narayan. The Will dated 15.01.2002 executed by Sat Narayan was held to be having duly proved and hence the plaintiffs could not claim any relief of declaration to the extent of their shares in the suit properties. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff No.2-appellant, which was dismissed vide judgment and decree dated 08.04.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff No.2-appellant has contended that the Trial Court had erred in dismissing the suit of the plaintiffs and in accepting a forged and fabricated Will purportedly executed by Sat Narayan. He contended that the Will was a suspicious document since the Testator had not left anything for his daughters. Learned counsel further submitted

that the suit properties were ancestral and therefore the suit of the plaintiffs ought to have been decreed.

I have heard learned counsel for the plaintiff No.2-appellant and perused the paper book.

In the present case the plaintiffs have approached the Court by contending that the suit properties were ancestral in the hands of Sat Narayan and upon his death the plaintiffs derived a share in the same. To counter the stand taken by the plaintiffs, the defendant No.1 set-up a Will dated 15.01.2002 left by Sat Narayan. Both the Courts below have held that the said Will was duly proved and thus accepted the same. The scribe of the Will and one of its attesting witnesses were examined on behalf of defendant No.1 and the Will dated 15.01.2002 has been accepted by both the Courts. Merely because the daughters of the Testator have been left out from the Will is not sufficient ground to discard it. In **Ramabai Padamakar Patil (D) through LRs. vs. Rukminibai Vishnu Vekhande [2003(4) RCR Civil 92]** the Supreme Court held that :

“8. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be

held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. In Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee (dead) by LRs. and Others, [1995(4) SCC 459 : 1995(3) RCR (Civil) 520 (SC)] it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly. The concurrent finding recorded by the District Court and the High Court for doubting the genuineness of the Will on the aforesaid ground was reversed.”

Moreover, the Will dated 15.01.2022 left by Sat Narayan has never been challenged by the plaintiffs.

Regarding the suit properties being ancestral, suffice it to state that the plaintiffs had approached the Court with such a plea and it was incumbent upon them to establish that the suit properties were ancestral in the hands of Sat Narayan. However, the plaintiffs miserably failed to establish this stand taken by them. There is no revenue record or other document showing that the suit properties devolved upon Sat Narayan from his father and forefathers. In the absence of any evidence, it cannot be held that the suit properties were ancestral.

Learned counsel for the plaintiff No.2-appellant has simply reiterated the submissions that were advanced before the Courts below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

31.05.2022

Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No