

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

114

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**RSA No. 1966 of 2022 (O & M)**

**Date of decision : 27.9.2022**

**Harbans Singh**

**.....Appellant**

**Vs.**

**Hardev Singh and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Rakesh Mohan Dutta, Advocate, for the appellant

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**TRIBHUVAN DAHIYA, J. (Oral)**

**CM No. 6903-C of 2022:**

This is an application for condonation of 64 days delay in filing the present appeal.

For the reasons stated in the application, the same is allowed.  
Delay of 64 days in filing the present appeal is condoned.

**RSA No. 1966 of 2022 (O &M):**

1. This is plaintiff's second appeal against the concurrent findings of facts recorded by the trial Court as well as the lower Appellate Court against him.

2. The facts in brief are; the plaintiff filed a suit for declaration to the effect he along with defendants no.1 to 3 are co-owners and in joint possession of the suit land along with fixtures and all other rights appurtenant thereto. Declaration was also sought that *mutation* no. 446 (succession) dated 28.4.2005 of inheritance from late Mangal Singh in favour of defendant no.1 on the basis

of registered Will dated 3.9.1996, was illegal and void, and had no effect on the plaintiff's rights. Further, a mandatory injunction was sought directing defendant no.1 to hand-over possession of the suit property to the extent of 1/3<sup>rd</sup> share.

3. Both the Courts below have held that execution and correctness of the Will dated 3.9.1996 by deceased Mangal Singh, has been admitted by the plaintiff himself on affidavit. The fact stands established in the testimony of defendant no.3 as DW-2. Finding of the lower Appellate Court to this effect, recorded in para no.18 of the judgment, is as under:

The parties to the case are related to each other. The plaintiff, defendants no.1 to 3 and the defendant no.4 through LR's are real brother and sisters. The defendant no.3 Jaswant Kaur had stepped into the witness box as DW2 and she had supported case of plaintiff/appellant. However, in her cross-examination she has submitted that a document Mark-A i.e. affidavit by the plaintiff/appellant and defendant no.3 Jswant Kaur was executed by them on 7.2.2003, whereby they have admitted the correctness of the Will executed by deceased Mangal Singh and have raised no objection, if the property is transferred in the name of defendant/respondent no.1. Thus from the aforesaid act and conduct of plaintiff and defendant no.3 Jaswant Kaur, they are estopped from challenging the Will executed by the deceased Mangal Singh. The Will in question is a valid document, which fact has been duly proved by the defendants/respondents from the testimony of DW-3 Sukhwinder Singh, Registry Clerk. The defendants/respondents have also examined DW-2 Jaswant Kaur who is the attesting witness of the Will Ex.DW2/A executed by deceased Mangal Singh and from the daughter-in-law of the scribe DW-4 Kulwant Kaur.

4. There is no evidence on record to establish the suit land as ancestral property. This fact, coupled with the plaintiff's admission of correctness of the Will in question, renders the suit not maintainable.

Therefore, there is no ground to interfere with the well-reasoned judgments of the Courts below.

5. No substantial question of law arises for consideration in the appeal.

6. Dismissed.

(TRIBHUVAN DAHIYA)  
JUDGE

**27.9.2022**

*Ashwani*

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