

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105) CM-3544-C-2023
CM-3543-C-2023
CM-3545-C-2023 in/and
RSA-922-2023
Date of Decision : April 13, 2023

Krishna .. Appellant

Versus

Inder Singh and another .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gopal Sharma, Advocate, for the applicant-appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-3544-C-2023

As prayed for, the application is allowed.

Delay of 09 days in filing the appeal is condoned.

CM-3543-C-2023

As prayed for, the application is allowed.

Delay of 22 days in re-filing the appeal is condoned.

RSA-922-2023

Present Regular Second Appeal has been filed challenging the
judgment and decree of the trial Court dated 21.12.2016 by which, the suit

filed by the appellant-plaintiff claiming the ownership of the land in question, was dismissed as well as the judgment of the lower Appellate Court dated 28.10.2022 by which, the judgment and decree of the trial Court was upheld.

Learned counsel for the appellant argues that in the present case, to oust the claim of the appellant-plaintiff, the Will of the deceased Bhikhu son of Budha in favour of defendant No.1 has been believed by the Courts below whereas, there was no evidence on record to accept the said Will dated 28.07.2008.

On being asked to point out the perversity, learned counsel for the appellant argues that in the Will dated 28.07.2008, though the name of the executant Bhikhu has been typed but the name of the witnesses have not been typed but have been handwritten, which shows that there was no witness present at the time of execution of the said Will and those signatures of the witnesses have been obtained at a later point of time.

On being asked to point out the evidence to support the said argument, learned counsel for the appellant has not been able to point out any evidence that any of the attesting witness has conceded or stated that they were not present at the time of the signing of the Will either by them or by the executant Bhikhu. Rather, it is a conceded position that one of the attesting witness namely Jagdish Sharma i.e. DW-1 has categorically stated in his statement that he was present at the time of execution of the Will and the executant Bhikhu signed the Will in his presence and he has also appended his signatures in the presence of the executant, which evidence

has gone un-rebutted.

Once the said statement of one of the attesting witness is already on record, the argument being raised by the learned counsel for the appellant that the finding of the Courts below are perverse, cannot be accepted and the said argument is accordingly rejected.

Learned counsel for the appellant has also raised an argument that the beneficiary of the Will i.e. defendant No.1 never stayed with the grandfather i.e. Bhikhu at any given point of time and there is no documentary evidence which has come on record that respondent-Inder Singh was residing with Bhikhu.

On being asked to point out any evidence which has been brought on record to negativate the said finding, learned counsel for the appellant has not been able to point out any evidence to the said effect. Rather, it is also a conceded position that keeping in view the statement of the witnesses, it has already come on record that since the age of three years, respondent-Inder Singh was residing with his grandfather Bhikhu i.e. executant of the Will. Once an evidence has already come on record to support the finding that Inder Singh was residing with Bhikhu, which fact has gone un-rebutted, the argument being raised that the oral evidence should have been corroborated by a documentary evidence, is too much to ask for and that too in the present Regular Second Appeal.

No other argument was raised.

Keeping in view the above, no ground is made out for interference called by this Court in the present Regular Second Appeal and

the same is accordingly dismissed.

CM-3545-C-2023

As the main appeal has been dismissed, present application also stands dismissed.

April 13, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No