

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.110

Case No. : RSA-5612-2019 (O&M)

Date of Decision : August 18, 2023

Smt. Vinod and another Appellants
vs.

Charan Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. S. K. Panwar, Advocate
for the appellants.

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GURBIR SINGH, J. :

1. **C.M. No. 15978-C-2019** : This is application under Section 5 of the Limitation Act for condonation of delay of 34 days in filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 34 days in filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal** : The present appeal has been filed against concurrent finding of both the courts below.

3. The appellants filed a suit for declaration with consequential relief of permanent injunction. The main controversy is that the appellants are claiming that they have got right by way of amendment in Section 6 of the Hindu Succession Act, 1956 (for brevity – the Act), whereby rights have been given to the daughter that a daughter has equal right in the coparcenary property as a co-parcenar, as if she had been a son.

4. The learned courts below have held that the amendment came into effect on 09.09.2005 and the said amendment is prospective and not retrospective in nature. Reliance has been placed on a judgment of Hon'ble Supreme Court in **Sheela Devi and others vs. Lal Chand and another** reported as **2006 (8) SCC 581**, wherein it has been held that Section 6(1) of

the Act is only prospective in nature and cannot apply when succession has already opened prior to bringing in the said Section. In the case in hand, the predecessor-in-interest of the appellants died on 18.06.2001. The other point raised in the appeal was that the Will in question (Ex.D-1/Ex.P-24) is surrounded by suspicious circumstances. The same is result of fraud.

5. Both the Courts below, on the basis of evidence produced on record, came to the conclusion that Karan Singh executed a legal and valid Will. The plaintiffs-appellants are not in possession of the suit property and they did not seek possession of the suit property. A simple suit for declaration without seeking further relief of partition or joint possession is not maintainable under Section 34 of the Specific Relief Act.

6. In view of the aforesaid, I find no merit in the instant second appeal. The concurrent finding recorded by both the courts below is based on proper appreciation of evidence and does not suffer from any perversity or illegality. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

7. Pending applications, if any, shall stand disposed of along with this judgment.

August 18, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.