

RSA-4-2020 (O&M)

- 1 -

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

114

**RSA-4-2020 (O&M)
Decided on : 25.08.2023**

Narinderpal Kaur

... Appellant(s)

Versus

Sukhwinder Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Raj Kumar Arya, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-2-C-2020

- i. This is an application filed under Section 5 of the Limitation Act, 1963, for seeking condonation of delay of 43 days in filing the appeal.
- ii. In view of the averments made in the application, which is duly supported by an affidavit of the applicant-appellant, prayer made in the application is allowed and consequently, delay of 43 days in filing the appeal is hereby condoned.

RSA-4-2020

1. Present Regular Second Appeal (RSA) has been filed by the plaintiff (appellant herein) – Narinderpal Kaur, against the concurrent finding of dismissal of suit filed by her.

Basic claim of the plaintiff in the suit is that property in the hands of her father – Tarlok Singh, was ‘Joint Hindu Un-divided Family Coparcenary Property’ and she has right in it by birth. Therefore, transfer of the properties in the name of defendants No.1 & 2, who are related as son

RSA-4-2020 (O&M)

- 2 -

of Tarlok Singh and daughter-in-law of Tarlok Singh, respectively, is illegal and the said transfer of properties is to be set-aside.

2. Both the Courts below examined the record and reached to the conclusion that in support of the claim of the plaintiff, regarding properties in hand of Tarlok Singh being 'Joint Hindu Un-divided Coparcenary Property', no evidence has been produced. It is held that in the absence of any documentary evidence, no finding can be recorded regarding the property, as 'Joint Hindu Un-divided Family Coparcenary Property'. It is also held that in the absence of any such evidence produced by the plaintiff, 'Will' in question and *Malkiat Tabdilnama*, is valid one. Finding given by the learned First Appellate Court in para Nos. 16, 17, 18 & 19, are as under:-

“16. From scrutiny of lower court record, it is found that concededly plaintiff is daughter, Sukhwinder Singh defendant No. 1 is son and defendant No. 2 Kulwinder Kaur is widowed daughter in law of Shri Tarlok Singh as his son predeceased him and estate left behind by Shri Tarlok Singh is subject matter of this case which is purported to have been transferred by Shri Tarlok Singh in favor of defendants Nos. 1 and 2 in equal shares. They have sold some of property in dispute thereafter to defendant No. 6 and said transaction is also disputed by plaintiff/appellant. Plaintiff/appellant has sought annulment of disputed documents with the plea that property in hands of Shri Tarlok Singh, was joint Hindu undivided family co-parcenary property and she has right in it by birth and Sh. Tarlok Singh was not competent to transfer suit property in favour of defendants No. 1 and 2 as she has 1/5th share in suit property, because Rajwant Kaur and Manjit Kaur are other daughters of Sh. Tarlok Singh and Shri Tarlok Singh has left behind five class I legal heirs as stated above.

17. Obviously, it was incumbent upon plaintiff/

appellant Narinderpal Kaur to establish that property in dispute was joint Hindu undivided family co-parcenary property and Malkiat tabdil nama is result of impersonation and had never been executed by Shri Tarlok Singh her father, because it is the only short and straight controversy to be set rest by this court. Whether Will in question is proved or not is not the material question before this court, because deceased Tarlok Singh had transferred his entire estate through above said Malkiat tabdil nama.

18. *It is conceded fact that no documentary evidence has been brought on record to prove that property in dispute was joint Hindu family co-parcenary property in hands of Shri Tarlok Singh as karta of the family. Ex. P2 is copy of jamabandi for the years 2010-11, Ex. P3 is copy of jamabandi for the years 2005-06, which are not sufficient to prove above fact and no other document i.e. copy of mutation to show as to how property in dispute had come to hands of Shri Tarlok Singh has been produced on record. Plaintiff/appellant Narinderpal Kaur has appeared in witness as PW1 and during course of cross examination she has fixed last nail in coffin of her case by admitting that Tarlok Singh had purchased this property himself (reference first page of cross-examination dated 13.07.2016). On next page she has admitted that after death of Tarlok Singh, defendant No.1 Sukhwinder Singh has become owner of 7-8 killas of land and mutation sanctioned in his favor in this regard is correct. She has next admitted that Tarlok Singh had given this land to Sukhwinder Singh during his life time. It is pertinent to mention here that Sukhwinder Singh has acquired the aforesaid property from his father through Malkiat tabdil nama which is Ex. D1. Defendant No. 2 Kulwinder Kaur has also acquired her share in the property in dispute through same document. Once this document is admitted to be genuine by plaintiff/appellant qua Sukhwinder Singh, she cannot say that it is result of impersonation qua right of defendant No. 2*

Kulwinder Kaur. As stated by plaintiff/appellant Nairnderpal Kaur, Kulwinder Kaur has married to Gurwinder Singh after death of Balwinder Singh her husband. On page No. 3 she has made another fatal, candid and clear admission that property in dispute has been rightly mutated in favor of Sukhwinder Singh and others and she had seen revenue record with halqa Patwari. In the light of such a situation all contentions raised by learned counsel for plaintiff/appellant and defects pointed out by him in evidence of contesting defendants/respondents can be taken as an effort to inflate a punctured balloon only.

19. On pulverizing entire pleadings and evidence it comes on surface that there is not an iota of evidence on record to prove that property in dispute was joint Hindu family coparcenary property in hands of Shri Tarlok Singh as alleged. There is not an iota of evidence to prove that Shri Tarlok Singh was not having sound disposing mind or was not capable to execute the tabdil malkiat nama in question. Transfer of property through document in question in favor of Sukhwinder Singh is admitted to be correct and as such plaintiff/ appellant cannot say that same document is not correct concerning the rights created in favor of Kulwinder Kaur defendant No. 2 to the extent of half share in disputed property.”

3. Nothing has been referred or pointed out by counsel for the appellant/plaintiff before this Court that the finding recorded by the learned First Appellate Court, is against the evidence available on record.

4. In view of above, this Court does not find any illegality, irregularity or perversity in the well reasoned judgment(s) & decree passed by the Courts below, and is of the view that the suit filed by the appellant (plaintiff) has been rightly dismissed. Even no question of law, much less, any substantial question of law arises for consideration in the present appeal

RSA-4-2020 (O&M)

- 5 -

for interference in the impugned judgments & decree passed by the Courts below.

Thus, the instant appeal being devoid of merits, stands dismissed. The judgments & decree passed by both the Courts below are affirmed.

(SANJAY VASHISTH)
JUDGE

August 25, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*