

2023:PHHC:124861

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

**RSA-3803-2018(O&M)
Date of Decision: 20.09.2023.**

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Brij Mohan Mittal

.....Appellant

Versus

Mahabir Parsad Mittal

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Gaurav Singla, Advocate for the appellant.

GURBIR SINGH, J (ORAL)

CM-9742-C-2018

This application is filed under Section 151 CPC for condonation of delay of 79 days in re-filing the appeal.

In view of the grounds taken in the application, delay of 79 days in re-filing the appeal is condoned.

Civil Miscellaneous Application is allowed.

CM-9743-C-2018

This is an application under Section 151 CPC to exempt the appellant from filing true typed copies of judgments and decrees passed by both the learned Courts below.

For the reasons stated in the application, the same is allowed.

Main case:

1. This second regular appeal is filed against the concurrent finding of facts. The respondent/plaintiff filed a suit for declaration with

consequential relief of permanent injunction and mandatory injunction.

2. The brief facts which are necessary for disposal of this appeal are that parties are real brothers. A compromise was effected between the parties and other family members including the defendant in a criminal complaint. A compromise has also been effected between the respondent/plaintiff and the appellant/defendant. The mother of the parties was mentally upset. She was an illiterate lady. The defendant got a Will prepared from his mother on 15.12.2009, got the same registered and got the entire property transferred in his name.

3. The case of the defendant is that the plaintiff was adopted in his childhood by grandmother of defendant. He was living separately from the family of the father of the defendant. The settlement made by the plaintiff was conditional. The defendant served his mother and the Will was executed and got registered in his favour on 15.12.2009, by his mother in sound disposing mind.

4. The plaintiff has examined himself as PW1 and Pawan Kumar, Record Keeper, registration office Rohtak as PW2. On the other hand, the defendant -Brij Mohan Mittal examined himself as DW-1 and Manju as DW-2.

5. The Courts below have held that appellant/defendant failed to prove the Will dated 15.12.2009 and accordingly, declared the same as null and void.

6. Learned counsel for the appellant/defendant has argued that the Will was drafted by the mother of the appellant/defendant herself and it was witnessed by two Advocates and his sisters Manju (DW-2) and Asha Jain

were present at the time of execution of Will.

7. Heard.

8. The Will is a document which as per law, is required to be attested. As per Section 68 of the Indian Evidence Act, atleast one attesting witnesses of the Will is required to be examined to prove the Will otherwise it cannot be used in evidence. The appellant/defendant did not examine any of the attesting witnesses of the Will. He has examined his sister Manju, whose signatures are not there on the Will. Moreover, she did not come to face the cross-examination, so her statement cannot be read in evidence.

9. The learned trial Court vide judgment dated 11.09.2015 held in paragraphs 24 and 25 as under:-

“24. Furthermore, the witnesses to the Will are two Advocates of Bar Council, Faridabad as per the averments in the written statement itself. However, a perusal of the Will shows that the names of the witnesses are not written on the front page and it merely bears their signatures. On the back page where the details of the witnesses are given, it is written as Virender Singh son of ADV resident of District Court, Faridabad. Similarly, about the other witness, it is written as Suresh Khanna son of ADV resident of District Court, Faridabad. Thus, deliberately, the identity of the witnesses has been withheld. However, in the cross-examination, DW1 admitted in his cross-examination that his son and daughter are both Advocates in Faridabad.

25. This Court is at pains to note the conduct of the Executive Officer who registered the said Will without proper parentage and addresses of the witnesses. Thus, in these circumstances, the Will is surrounded with many suspicious circumstances which the defendant has miserably failed to dispel. As such, the Will has not been proved to be a genuine document and mere registration of the same is of no consequence. As such, the Will is held to be null and void.”

10. Moreover, it is not the case of appellant/defendant that his mother was a literate lady. The appellant/defendant has admitted in cross-examination that his mother is barely able to read Hindi but Will is scribed by her. Thus, the Will propounded by the defendant is not proved to be a genuine document. There is neither any misreading of evidence nor misappreciation of evidence by the Courts below.

10. In view of above, the appellant/defendant has failed to prove the genuineness of alleged Will. The concurrent finding of facts recorded by the Courts below need no interference as these are well founded and based on facts. No substantial question of law arises in the present regular second appeal and the same is, accordingly, dismissed.

(GURBIR SINGH)
JUDGE

20.09.2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No