

**RSA-1243-2021****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****109****RSA-1243-2021 (O&M)
Date of decision: 19.09.2024****SUKHDEV SINGH****...Appellant****Versus****JAGRAJ SINGH AND ORS****...Respondents****CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:- Mr. Ashish Gupta, Adocate,
for the appellant.************RAJBIR SEHRAWAT, J. (Oral)****CM-5190-C-2021**

1. This is an application under Section 151 CPC for condonation of delay of 938 days in re-filing the appeal.

2. In view of the grounds mentioned in the application, the same is allowed and delay of 938 days in re-filing the appeal is condoned.

RSA-1243-2021

1. The present regular second appeal has been filed by the unsuccessful plaintiff before both the courts below in a suit for declaration and joint possession of the suit property.

2. The brief facts, as involved in the present case, are that the plaintiff-appellant had filed a suit asserting therein that his father-Mukhtiar Singh had got the suit property, which is an agricultural land, by way of inheritance and thus, was the ancestral property. After the death of Mukhtiar Singh, respondent No.1 and 2 got the mutation of inheritance

**RSA-1243-2021**

entered in their names on the basis of an alleged Will dated 28.04.2004. However, Mukhtiar Singh never executed the alleged Will in favour of respondents No.1 and 2. The Will was forged and fabricated. Hence, the property has to go by way of natural succession, amongst all the three sons and three daughters of deceased-Mukhtiar Singh.

3. On the basis of evidence led by the parties and after appreciating the material on record, the trial Court dismissed the suit filed by the appellant-plaintiff and upheld the Will set up by respondents No.1 and 2, vide impugned judgment and decree dated 30.08.2017. Aggrieved against the same, the present appellant filed the first appeal before the Court of Additional District Judge, Moga, which was also dismissed, vide impugned judgment and decree dated 22.10.2018. Aggrieved against the same, the present appeal has been preferred.

4. Arguing the case, learned counsel for the appellant has submitted that the Will produced by respondents No.1 and 2, is totally a forged and fabricated. One of the beneficiaries of the Will has been a participant in the process of preparation of the Will. Therefore, the Will is surrounded by suspicious circumstances. Both the courts below have gone wrong in law. The suit filed by the appellant should have been decreed, leaving the property to devolve upon the parties by way of natural succession.

5. Having heard learned counsel for the appellant and having perused the case file, this Court finds that the Will has been duly proved by the respondents, by examining the relevant witnesses. Otherwise also, the Will itself speaks of the fact that the present appellant was excluded from

**RSA-1243-2021**

the bequeathed property by way of the Will, because of the fact that he had already been given some other properties separately. Therefore, mere exclusion of the appellant from the natural succession by way of the Will, cannot be taken a ground to vitiate the Will, *per se*. Although, learned counsel for the appellant has also submitted that one of the beneficiaries of the Will was a participant in the execution of the Will, therefore, the Will is surrounded by suspicious circumstances, however, even this argument of learned counsel for the appellant has to be noted only, to be rejected. It is not a case where Jagraj Singh, who is alleged to be a participant in the process of the execution of the Will, is the only beneficiary of the Will. His another brother-Zora Singh is also the beneficiary of the Will and there is no allegation of his participation in any process of execution of the Will, as such. Therefore, mere alleged participation of Jagraj Singh in the execution of the Will, cannot be a ground for discarding the Will, rather, this lends more credence to the execution of the Will, because one son of the executant of the Will is stated to have participated in the execution of the Will which is in favour of another son as well. There could not have been a better situation for a valid Will. Otherwise also, even participation of Jagraj Singh is not by way of either authoring the Will, or attesting the Will or interfering with the actual process of execution of the Will, as such. The only allegation is that he had gone to the office of the Joint Sub Registrar, alongwith the executant of the Will, where the Will was registered by the executant. This conduct of Jagraj Singh cannot even be said to be a participation in the execution of the Will, as such. Therefore, there is nothing wrong with the judgments and decrees passed by the



RSA-1243-2021

Courts below.

6. Otherwise also, the present appeal is directed against the concurrent judgments, decrees and the findings of fact recorded by both the Courts below. However, the concurrent findings of fact recorded by the Courts below are not even to be interfered with only for possibility of arriving at a different conclusion on re-appreciation of the evidence; unless there is an abject perversity shown to the Court or some substantial question of law is involved in the matter. However, learned counsel for the appellant has not been able to highlight any substantial question of law involved in the matter and this Court does not find any perversity in the findings recorded by both the Courts below.

7. In view of the above, finding no merit in the present appeal, the same is dismissed.

8. The pending miscellaneous application, if any, is also disposed of as such.

19.09.2024
parveen kumar

(RAJBIR SEHRAWAT)
JUDGE

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