

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.2435 OF 2019(O&M)
DATE OF DECISION: 09.04.2024

Rajinder Kaur and othersAppellants/Plaintiffs

VERSUS

Baljit Ram and othersRespondents

CORAM HON’BLE MR. JUSTICE GURBIR SINGH

Present Mr.Dinesh Nagar, Advocate,
for the appellants.

GURBIR SINGH, J

CM-6544-C of 2019

This is an application under Order 41 Rule 3A read with Section 5 of Limitation Act for condonation of delay of 25 days in filing the appeal.

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

Delay of 25 days in filing the appeal is condoned.

RSA-2435-2019

1. Regular Second Appeal has been filed against the concurrent findings of the Courts below.
2. The appellants/plaintiffs filed a suit for separate possession by way of partition of their 1/3rd share in the suit property. Bhagat Ram, grandfather of appellants/plaintiffs no.2,3 and 4 executed the will of his entire property in favour of Om Parkash and defendants. Plaintiffs are legal heirs of Om Parkash, since deceased. Plaintiffs being his legal heirs are co-sharers with defendants in the house in dispute to the extent of 1/3rd share. House in dispute is the ancestral house of the parties and they want to get their share separated.

3.

Learned counsel for the appellants/plaintiffs contends that suit property is not ancestral property and they inherited the property by virtue of the will dated 15.02.1984 from Bhagat Ram.
4.

I have heard the submissions of the learned counsel for the appellants/plaintiffs.
5.

As per the specific case of the appellants/plaintiffs, Bhagat Ram executed a will dated 15.02.1984 in favour of Om Parkash and defendants in equal shares. But the said will was not proved during the trial. As per the provisions of Section 68 of the Indian Evidence Act, 1872, the will is a document which is required by law to be attested and will cannot be used as evidence until one attesting witness atleast has been called for the purpose of proving its execution. Moreover, the other natural heirs of the deceased Bhagat Ram i.e daughters of deceased are not even impleaded in this suit. The case of the appellants/plaintiffs is on the basis of will which remained unproved on the file.
6.

No substantial question of law is involved in the instant appeal.
7.

Appeal being without merit is, hereby, dismissed.

09.04.2024

mamta

Whether speaking/reasoned

Whether reportable

(GURBIR SINGH)

JUDGE

Yes/No

Yes/No