

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.1572 of 1989 (O&amp;M)

Date of Order:28.02.2024

Smt. Tajjan

.Appellant

Versus

Wallu and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amandeep Singh Jawandha, Advocate  
Ms. Jaspreet Kaur, Advocate  
for the appellant.

ANIL KSHETARPAL, JC.M.No.4980-C-2022

1. For the reasons mentioned in the application, which is supported by an affidavit, the delay of 2445 days in filing the application for restoration is condoned.

2. CM stands disposed of.

C.M.No.4981-C-2022

3. For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed and the appeal is restored to its original number.

MAIN

4. On 26.02.2024, the following order was passed:-

*“This appeal was dismissed for non-prosecution on 24.10.2013.*

*An application for re-admission of the appeal along with an application for condonation of delay of*

*2445 days in filing the application for restoration of the appeal has been filed.*

*The learned counsel representing the respondent is also stated to have died.*

*Keeping in view the aforesaid facts, it is considered appropriate to call upon the learned counsel representing the appellant to address the court on the merits of the case.*

*He prays for a short accommodation.*

*List on 28.02.2024, in the urgent list.”*

5. Heard the learned counsel representing the appellant on the merits of the appeal.

6. In this regular second appeal, defendant no.5-appellant assails the correctness of the judgment and decree passed by the first appellate court which in turn has reversed the judgment and decree passed by the trial court.

7. The dispute is with regard to inheritance of late Sh. Baggu. The appellant is married daughter of late Sh. Baggu, whereas the respondent-Wallu is son of late Sh. Baggu. It is the case of the plaintiff (Wallu) that late Sh. Baggu executed a Will dated 17.05.1980, bequeathing the suit property in his favour.

8. While contesting the suit, the defendants did not admit the Will. In order to prove the Will, PW3-Fatta, the attesting witness of the Will was examined. The scribe PW2-Sh. Surinder Kumar Sharma was also examined by the plaintiff.

9. The trial court held that the Will is surrounded by suspicious circumstances. Hence, the suit was dismissed.

10. However, the first appellate court on re-appreciation of the evidence arrived at a conclusion that the will has been proved by examining

Sh. Fatta and Sh. Surinder Kumar Sharma. The court also held that the Will is not surrounded by suspicious circumstances.

11. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paper book.

12. The learned counsel representing the appellant submits that the Will is not registered and Sh. Fatta, the attesting witness, is close relative of Sh. Wallu.

13. This court has considered the submissions of the learned counsel representing the appellant.

14. On a court question, the learned counsel representing the appellant admits that Sh. Fatta was grand son of the testator's first cousin. Thus, he was equally related to Sh. Wallu as well as the appellant-Tajjan. It is evident that the appellant was married and living in some other village. It is also evident that when late Sh. Baggu died, he had only one son who was alive, namely, Wallu, whereas the second son Khushian, had predeceased him. The learned counsel representing the defendants has cross-examined the attesting witness Sh. Fatha, however, failed to impeach his credibility. The scribe of the Will has also been examined.

15. There is no mandatory requirement to get the Will registered. It is optional. The unregistered Will is equally valid.

16. The learned counsel representing the appellant did not raise any other argument.

17. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

18. Dismissed.

19. All the pending miscellaneous applications, if any, are also disposed of.

February 28, 2024  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO