



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4276 of 2018 (O&M)

DATE OF DECISION: 30th SEPTEMBER, 2024

Bagicha Singh and another

.... Appellants

Versus

Mal Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Munish Gulati, Advocate
for the appellants.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

CM-11935-C-2018

This is an application for condonation of delay of 217 days
in filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay in filing the appeal is condoned

Main Appeal

1. This is the Regular Second Appeal filed by the plaintiffs
challenging the concurrent judgments and decrees passed by the Courts
below in a suit for declaration.

2. The brief facts of this case are that the plaintiffs filed a suit
asserting therein that they are owners in possession of the house
measuring 7 marlas, as detailed in the plaint. It was further asserted that
earlier the house was owned by Nihal Kaur, who was the grandmother of



the appellants. However, appellant/plaintiff No.1-Bagicha Singh was adopted by Nihal Kaur as he was serving her and Nihal Kaur was residing with him. Nihal Kaur had executed a Will dated 05.04.1963 in favour of plaintiff No.1. The defendants, were having no concern, right title or interest in the said house. However, they were bent upon dispossessing the plaintiffs forcibly. Therefore, a decree for declaration in favour of the plaintiffs that they are owner in possession of the house in question was prayed for; with a consequential relief of permanent injunction.

3. The parties led their respective evidence. After appreciation the material brought on record by the respective parties, the trial Court dismissed the suit filed by the appellants, vide judgment and decree dated 20.02.2016. Feeling aggrieved against the same, the appellants had filed the appeal before the lower Appellate Court, which was also dismissed, vide judgment and decree dated 30.03.2017. Hence, the present appeal has been preferred by the appellants.

4. While arguing the case, learned counsel for the appellants has vehemently contended that the appellants are the owner in possession of the suit property on the basis of Will dated 05.04.1963. Reiterating the pleadings taken by the plaintiffs in the suit, learned counsel for the appellants has submitted that the respondents had no concern with the suit property in any manner whatsoever. They being stranger to the property, were illegally harassing the appellants and tried to dispossess them. The Will has duly been proved before the Civil Court. Therefore, both the Courts below have gone wrong in law in declining injunction.

The judgments and decrees passed by the Courts below deserve to be set



aside and the suit filed by the appellants deserves to be decreed. No other argument has been raised.

5. Having heard learned counsel for the appellants and having perused the record, this Court finds that the claim of the appellants was based on the Will dated 05.04.1963, allegedly, executed by Nihal Kaur. The said Will was required to be proved by leading the evidence as per the mandate of the Indian Evidence Act, 1872. However, no evidence worth the name has been led on file to prove the existence of the Will in favour of the appellants. Therefore, this Court does not find any illegality or perversity with the findings recorded by both the Courts below to the effect that the appellants have failed to prove the Will in their favour, as such.

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 appellants 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.

(RAJBIR SEHRAWAT)
JUDGE

30th SEPTEMBER, 2024
‘Sandeep’

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>