

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

**RSA-15003-2018 (O&M)  
Date of decision:09.01.2024**

Gurtej Singh

... Appellant

Vs.

Ajmer Singh &amp; others

... Respondents

**CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. MJS Bedi, Advocate for the petitioners.

...

**SUKHVINDER KAUR, J.****CM-19418-C-2018:**

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of 142 days delay in filing of the accompanying appeal.

In view of the averments made in the application, which is duly supported by an affidavit, delay of 142 days in filing of the accompanying appeal is condoned.

CM stands disposed of.

**Main case:**

1. This is a regular second appeal filed against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was dismissed.

2. Brief facts as per plaint are that the plaintiff filed a suit for declaration on the averments that the plaintiff and defendants No.2 and 3 are the joint owners in possession of land measuring 45 kanals 5 marlas, 9

kanals 0 marla, 6 kanal 6 marlas and 2 kanals 0 marla as detailed in the head note of the plaint as per jamabandi for the year 2009-10. The defendant Ajmer Kaur and deceased Balvir Kaur had no concern with the suit land. Earlier Jangir Singh S/o Santa Singh was owner of the suit land who was father of the parties and grandfather of defendants No.5, 6 and 7 and who died on 30.10.1988. Chatin Kaur widow of Jangir Singh and Balvir Kaur had also died. Estate of Jangir Singh was inherited by plaintiff and defendants No.1 to 4. During his lifetime, Jangir Singh without any pressure and with his own free will executed a Khangri Will dated 08.10.1988 in the presence of Kaur Singh - Panch and Chaichal Singh - Nambardar. This Will was scribed by Sukhdev Singh S/o Kartar Singh. It was alleged that this was the last Will of Jangir Singh. Mutation No.15687 qua inheritance of Jangir Singh has been sanctioned in the name of natural heirs of deceased Jangir Singh which is illegal, null and void qua the rights of the plaintiff.

3. The trial Court vide judgment and decree dated 13.07.2016 dismissed the suit of the plaintiff. The appeal against the said judgment and decree filed before the first Appellate Court was also dismissed vide judgment and decree dated 16.02.2018. Resultantly, the plaintiff/appellant is in second appeal before this Court.

4. Learned counsel for the appellant has contended that the Will in question stands proved on record which has not been properly considered by both the Courts below. He has further contended that it has not been appreciated by both the Courts below that Jangir Singh with his own free will and in sound disposing mind executed the Khangri Will in question in order to give equal shares to his sons as he had already solemnized the

marriage of his daughter by spending sufficient amount. He has submitted that as plaintiff/appellant and defendants/respondents No.1 to 3 were residing abroad, so the said Will was not within their knowledge and mutation No.15681 was sanctioned on the basis of natural succession in favour of the natural heirs of the deceased – Jangir Singh. He urged that infact evidence of the plaintiff remained unrebutted as the defendants were proceeded ex-parte before the Trial Court and both the Courts have misread/mis-appreciated and overlooked the material evidence on record while passing the impugned judgment and decree.

5. I have heard learned counsel for the appellant and gone through the records thoroughly.

6. There is a concurrent finding of both the Court that the Will in question was surrounded by suspicious circumstances. No reason has been assigned in the Will that why Chatin Kaur widow of Jangir Singh was deprived from bounty of deceased. Even no provision for her maintenance has been made in the impugned Will. No attesting witness of the Will has been examined as per provisions of Section 68 of the Indian Evidence Act. Even the thumb impressions of testator – Jangir Singh has not been got proved from any handwriting and fingerprint expert. The first Appellate Court has rightly pointed out that as the first two pages of the Will containing entire subject matter of the Will were not bearing any thumb impressions of the testator, so no sanctity could be attached to these two pages of the impugned Will and fabrication of the Will cannot be ruled out. Though mutation No.15681 was sanctioned on 15.06.1989 in favour of all the natural heirs of the deceased, but the present suit was filed on 02.07.2013

i.e. after a long delay of 24 years. The first Appellate Court has rightly not accepted this plea of the appellant for the delay that the plaintiff came to India in March 2013 and only then he came to know about the mutation No.15681 dated 15.06.1989 and then he filed the present suit.

7. Thus only after due appreciation of the evidence on record, the findings have been returned by both the Courts below that the suspicious circumstances surrounding the Will are not dispelled. The concurrent finding recorded by both the Courts below are based on proper appreciation of evidence and law.

8. No question of law much less substantial question of law arise for determination in the present second appeal. The appeal is without any merits and is hereby dismissed.

( SUKHVINDER KAUR )

JUDGE

09.01.2024

harjeet

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable?        | Yes/No |