

RSA-867-2023 (O&M)

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PHHC :

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

**RSA-867-2023 (O&M)
Decided on : 11.02.2025**

Gurshaanvir Singh and another

..... Appellants

Versus

Rajveer Singh alias Rajbir Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Prateek Sodhi, Advocate with
Mr. Aharjot Grewal, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

CM-3326-C-2023

Prayer in the present application filed under Section 5 of the Limitation Act, is for condonation of delay of 39 days in filing the accompanying appeal.

Heard.

For the reasons, mentioned in the application which is duly supported by an affidavit, the same is allowed and the delay of 39 days in filing the accompanying appeal is condoned.

RSA-867-2023 (O&M)

The defendants No.1 and 2 (Gurshaanvir Singh and Manjit Kaur alias Mandeep Kaur) are in second appeal against the judgment and decree dated 14.11.2022, passed by the Court of learned Additional District Judge,

Tarn Taran, dismissing their appeal against the judgment and decree dated 13.02.2019, passed by the Court of learned Additional Civil Judge (Senior Division), Tarn Taran vide which the suit for declaration and joint possession filed by the plaintiff Rajveer Singh @ Rajbir Singh was decreed.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3 (i). The dispute is as regards the estate of one Jailovejeet Singh. He was earlier married to one Harkirpal Kaur from whom, the plaintiff was born. The marriage was annulled on 17.09.2009 and a decree of divorce was passed. Thereafter, the said Jailovejeet Singh performed marriage with defendant No.2 and from the said wedlock, defendant No.1 was born. Jailovejeet Singh expired on 02.02.2015. The plaintiff claimed that on the death of Jailovejeet Singh, he had become the co-owner in the suit property (fully described in the plaint) to the extent of 1/4th share whereas, it was claimed by defendants No.1 and 2 that Jailovejeet Singh had executed a Will dated 28.01.2015 in favour of defendant No.1 and in terms of the same, defendant No.1 had become the exclusive and absolute owner of the suit property. It would be relevant to mention here that defendant No.3 Sukhveer Kaur alias Sukhbir Kaur and defendant No.4 Kuldeep Kaur were both wives of Rashpal Singh, father of Jailovejeet Singh. From the records, it has emerged that Jailovejeet Singh was the son of defendant No.4 Kuldeep Kaur.

3 (ii). The plaintiff filed a suit for declaration and joint possession claiming to be the co-owner in the suit property to the extent of 1/4th share. He challenged the Will dated 28.01.2015 stating that the same was a forged and fabricated document and was, therefore, liable to be set aside. He

claimed that after the death of Jailovejeet Singh, the plaintiff, defendants No.1 and 2 and the wife of Rashpal Singh had become the owners of 1/4th share each.

4(i). The suit was opposed by defendants No.1 and 2 and it was averred that Will dated 28.01.2015 was a genuine document. Defendant No.3 admitted the relationships, the factum of two marriages of Jailovejeet Singh and the plaintiff and defendant No.1 being the sons of Jailovejeet Singh. Defendant No.3 also admitted the Will dated 28.01.2015 having been executed. However, she claimed that she was the only wife of Rashpal Singh.

4 (ii). Defendant No.4 also filed a written statement admitting the relationships but stating that Will dated 28.01.2015 was a forged and fictitious document. She also admitted that Rashpal Singh had contracted two marriages i.e. with Sukhveer Kaur @ Sukhbir Kaur-defendant No.3 and Kuldeep Kaur-defendant No.4.

5. From the pleadings of the parties, the following issues were framed:-

- 1. Whether the plaintiff is legal heir of Jailovejeet Singh ?
OPP**
- 2. If so, whether the plaintiff is entitled to one fourth share in the estate of deceased Jailovejeet Singh ? OPP**
- 3. If so, whether the mutation No.511 is liable to be set aside being illegal, null and void ? OPP**
- 4. If so, whether the plaintiff is entitled for declaration as prayed for ? OPP**
- 5. If so, the plaintiff is entitled for permanent injunction, as prayed for ? OPP**

6. *Whether the deceased Jailovejeet Singh executed any Will dated 28.01.2015 in favour of the defendants ? OPD*

7. *If so, whether suit of the plaintiffs is not maintainable ? OPD*

8. *Relief.*

6. Parties led their respective evidence.

7. The trial Court decreed the suit filed by the plaintiff holding that the Will dated 28.01.2015 had not been proved in accordance with law and, therefore, as per natural succession, the plaintiff had become the owner of the suit property to the extent of 1/4th share. The appeal filed by defendants No.1 and 2 against the said decision was dismissed, leading to the filing of the present regular second appeal.

8. I have heard learned counsel for the appellants.

9. Learned counsel has submitted that both the Courts gravely erred in decreeing the suit and holding the Will not having been proved. He submits that some documentary evidence led before the Revenue Authorities had been produced on record but the same had not been considered by the courts. Learned counsel submits that under the circumstances, the judgments passed by both the Courts are not sustainable.

10. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

11(i). The relationship between the parties is admitted. It was admitted that Jailovejeet Singh had contracted two marriages, the first being with Harkirpal Kaur which was dissolved on 17.09.2009. However, the plaintiff was born from this wedlock. The second marriage was performed with defendant No.2 and from the said wedlock, defendant No.1 was born. It also

came on record that Jailovejeet Singh was born from the wedlock of Rashpal Singh with defendant No.4. In so far as the Will dated 28.01.2015 is concerned, the same was not proved in accordance with law.

11 (ii). Coming to the Will dated 28.01.2015, Section 63 of the Indian Succession Act, 1925 lays down as under:-

“63. Execution of unprivileged Wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:

—
(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

11 (iii). Further, Section 68 of the Indian Evidence Act, 1872 lays down as under:-

68. Proof of execution of document required by law to be

attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

11 (iv). Notably, none of the attesting witnesses of the Will was examined nor was it pleaded or proved as to who had scribed the Will or whether the Will had been written by the deceased himself. If that was the case, a Hand-Writing expert was required to be examined which was not done. Since the onus to prove the Will was on the defendants, they examined only defendant No.2 Manjit Kaur @ Mandeep Kaur as DW1 and one Jaskaran Singh as DW2. The said Jaskaran Singh never turned up for cross-examination after tendering his affidavit Ex.DW2/A in examination-in-chief and, therefore, his statement was rightly discarded. From the side of the plaintiff also, only Harkirpal Kaur appeared as PW1. However, since the onus to prove the Will was on the defendants, they failed to discharge the same and, therefore, it was rightly held that the execution of the Will did not stand proved. Once the relationship of the parties was admitted and the Will did not stand proved, the property of Jailovejeet Singh would have to devolve by way of natural succession taking him to have died intestate. Therefore, the suit was rightly decreed by the trial Court and the said decree was upheld

by the Appellate Court. I find absolutely no reason to interfere in the said concurrent findings recorded by both the Courts.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

11.02.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No