



RSA-1716-2023 (O&M)

[310] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1716-2023 (O&M)
Date of Decision : 22.05.2025

Ram Chander and another ...Appellants

versus

Kamli alias Kamla and othersRespondents

Coram : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Devinder Singh, Advocate
for the appellants.

PANKAJ JAIN, J. (ORAL)

CM-6135-C-2023

[1] This is an application filed under Section 151 CPC for condonation of delay of 04 days in re-filing the appeal.

[2] For the reasons recorded in the application, this Court is satisfied that the appellants have made sufficient cause for condonation of delay of 04 days in re-filing of the appeal.

[3] Application stands **allowed** and delay of 04 days in re-filing of the appeal is condoned.

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[4] Plaintiffs are in regular second appeal.

[5] For the convenience, parties are hereinafter referred to by their original position in the civil suit, i.e. appellants as plaintiffs and respondents as defendants.



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[6] Plaintiffs filed a suit for declaration with a consequential relief of permanent injunction with respect to *gair mumkin* land measuring 0 kanal 08 marlas propounding unregistered Will claimed to have been executed by Bihari son of Butiya in his favour. The unregistered Will relied upon by the plaintiffs is dated 14.01.1961. Bihari died in the year 1970. Admittedly, mutation *qua* his succession was sanctioned on 13.03.1973. However, the present suit was instituted propounding Will only on 01.07.2015.

[7] Will is claimed to have been witnessed by Butiya father of Bihari and one Net Ram. The only evidence adduced to prove the Will was testimony of Gugan Singh claimed to be son of Harji, who is alleged to have scribed the Will. Apart from oral testimony of Gugan Singh, claiming that the Will is in handwriting of Harji, no evidence was adduced.

[8] Counsel for the appellants submits that the Courts below erred in ignoring the testimony of Gugan Singh, who proved that the Will was scribed by Harji.

[9] I have heard counsel for the appellants and have carefully gone through the records of the case.

[10] After death of Bihari in the year 1970, mutation was sanctioned on 13.03.1973. The Will saw light of day only in the year 2015 when the present suit was instituted. Even though, Butiya and Net Ram are reported to have died, yet propounder of Will was required to prove the same in accordance with Section 69 of the Indian Evidence Act by examining someone from the family of Butiya and Net Ram to prove their signatures as attesting witness. Admittedly, no effort was made to examine anyone from their family.



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[11] In the considered opinion of this Court, testimony of Gugan Singh scribed cannot substitute the requirement of examining the attesting witnesses/their family members in terms of Section 69 of the Indian Evidence Act.

[12] Resultantly, this Court finds that the Courts below have rightly non suited the plaintiffs, returning concurrent finding of facts, disbelieving the Will propounded by the plaintiffs. Finding no merits in the present appeal, the same is **dismissed**.

[13] All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

22.05.2025
'R. Sharma'

Whether speaking/ reasoned : *Yes/No*
Whether reportable : *Yes/No*