



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1202 of 2025 (O&M)
Date of Decision: 02.09.2025.

Surender Kumar and another

...Appellants

Versus

Krishna Devi

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Jasdev Singh Thind, Advocate
for the appellants.

VIKRAM AGGARWAL, J.(ORAL)

CM-4226-C-2025

Prayer in the present application filed under Section 151 of the Code of Civil Procedure is for condonation of delay of 188 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and the delay of 188 days in re-filing the appeal is condoned.

CM-4227-C-2025

Prayer in the present application filed under Section 5 of the Limitation Act is for condonation of delay of 04 days in filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and the delay of 04 days in filing the appeal is condoned.

RSA-1202-2025

This is defendant's appeal against the judgment and decree dated 09.05.2024, passed by the Court of Additional District Judge, Hisar, dismissing the appeal filed by the defendant against the judgment and decree dated 30.03.2018 passed by the Court of Civil Judge (Junior Division), Hisar, vide which the suit filed by the plaintiff for declaration was decreed

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

3. The plaintiff (Krishna Devi) instituted a suit for declaration to the effect that the house (fully described in the plaint) situated in the *Abadi Deh* of Village Siwani Bolan, Tehsil and District Hisar (hereinafter referred to as the disputed house) in which plaintiff was owner of $\frac{1}{2}$ half share, the other $\frac{1}{2}$ share being owned by defendant No.2 (Ompati) and that defendant No.1 had no right title and interest in the same. Both plaintiff and defendant No.2 are daughters of one Moman, whereas defendant No.2 (Surender Kumar) is the son of defendant No.2.

3.1. It was averred that registered Will dated 03.04.2007 stated to have been executed by Moman in favour of defendant No.1 was null and void and was not binding upon the rights of the plaintiff. The case set up was that the disputed house was earlier owned and possessed by Juglu Ram (grandfather of the plaintiff and defendant No.2 and father of Moman Ram). After the death of Juglu, Moman Ram came in possession of the same. It was averred that the disputed house was co-parcenary property and, therefore, the plaintiff had a pre-existing right in the same.

3.2. It was further averred that Moman Ram expired in 2007 after which plaintiff and defendant No.2 had acquired equal rights i.e., ½ half share in the said property.

3.3 It was averred that Moman Ram was 85 years old and usually remained ill, was suffering from Cancer and was unstable. The defendants colluded and a Will dated 03.04.2007 was claimed to have been registered in favour of defendant No.1 which was stated to be illegal and void. It was stated that the Will was liable to be set aside since Moman Ram was 85 years old and remained ill, he was a patient of Cancer, he was not in a position to walk and further that he had never lived with defendant No.1. It was also averred that the disputed house was a Joint Hindu Property. The Will was registered on 03.04.2007 and Moman Ram expired on 24.06.2007. Since the defendants did not admit the claim of the plaintiff, the suit was instituted.

4. The defendants opposed the suit. In the written statement, certain preliminary objections as regards maintainability, concealment, *locus standi*, cause of action, jurisdiction, estoppel etc., were raised. On merits, it was stated that the disputed house was owned and possessed by Moman Ram and defendant No.2. Defendant No.1 used to live with Moman Ram as Moman Ram had no son. He used to treat defendant No.1 as his son and defendant No.1 used to look after his daily needs. Moman Ram executed a registered Will on 03.04.2007 in favour of defendant No.1 after which defendant No.1 became owner in possession of the disputed house. All other averments were denied.

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

1. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
2. *Whether the suit of the plaintiff is false, frivolous and vexation?OPD*
3. *Whether the suit is not maintainable in the present form?OPD*
4. *Whether the plaintiff has no cause of action to file the present suit?OPD*
5. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
6. *Whether the plaintiff has no come to the Court with clean hands and suppressed the material facts from the Court?OPD*
7. *Whether this Court has no jurisdiction to entertain and try the present suit?OPD*
8. *Relief.*

6. Parties led their respective evidence. The trial Court decreed the suit vide judgment and decree dated 30.03.2018 and the appeal preferred by defendant No.1 was dismissed by the Court of Additional District Judge, Hisar, vide judgment and decree dated 09.05.2024, leading to the filing of the present Regular Second Appeal.

7. I have heard learned counsel for the appellant.

8. Learned counsel for the appellant submits that both Courts have gravely erred in decreeing the suit. He has referred to the oral and documentary evidence which was produced during the course of the arguments. Cross-examination of witnesses of the plaintiff has been referred to. Learned counsel also submits that the application for additional evidence was not decided by the First Appellate Court. He has also referred to the application for leading additional evidence filed in the present case in which

he seeks to examine the Sub-Registrar, Hisar along with the complete record of registered Will dated 03.04.2007.

9. I have heard learned counsel, but find the submissions to be devoid of merit.

10. Coming first to the issue of non-decision of the application for additional evidence, it is observed that by way of the said application, only the concerned official from the office of the Sub-Registrar was sought to be summoned as regards the registered Will dated 03.04.2007. It has to be borne in mind that the Will is already a registered Will and it is not understood as to for what purpose the said evidence was required. No doubt, normally, an application for additional evidence is to be decided along with the appeal and in case of non-decision of the same, the matter is to be remitted for a decision on the application. However, when it is found that no prejudice had been caused on account of non-decision on the application and that the additional evidence sought to be produced was not relevant for the decision of the case, it would not be appropriate to set aside the judgment of the First Appellate Court and remit the matter for a decision on the application for additional evidence.

11. In so far as the application for additional evidence moved in the instant appeal is concerned, as already mentioned, the petitioner seeks to examine the Sub-Registrar, Hisar along with the record of the registered Will. The application does not give any details as regards the purpose for which the Sub-Registrar is sought to be examined. The Registered Will is already on record. None of the attesting witnesses i.e., Rajesh Saini, Lambardar and Ramphal son of Jeet Singh were examined to prove the execution of the Will on account of which the Will was not relied upon and

the suit was decreed. Even the scribe was not examined and only a certified copy of the statement of one Jitender Handa from some other suit was produced. Mere examination of the Sub-Registrar, in any case, would not satisfy the provisions of Section 68 of the Indian Evidence Act, 1872. That being so, the application is found to be devoid of merit and is accordingly dismissed.

12. Reverting to the facts of the case, the relationship between the parties is admitted. The plaintiff and defendant No.2 are the daughters of Moman Ram, whereas defendant No.1 is the son of Ompati (defendant No.2). Moman Ram is stated to have expired on 24.06.2007. The plaintiff claimed that upon his death, the disputed house devolved upon her and defendant No.2 in equal shares on the basis of natural succession whereas defendants claimed that Moman Ram had executed a registered Will dated 03.04.2007 in favour of defendant No.1.

13. It is settled law that a Will has to be proved in terms of the provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. Concededly, no attesting witness of the Will was examined. It was also not brought on record that the attesting witnesses had expired or could not have been found. Had this been the case, Section 69 of the Indian Evidence Act, 1872, could have been invoked. Since none of the same was resorted to, both Courts rightly held that the execution of the Will did not stand proved. Merely because PW-2 Krishna Devi stated in her cross-examination that she identified the witnesses on the Will from their Photo, does not mean that the execution of the Will stood proved. As already stated, the execution of the Will was to be proved in

terms of the provisions referred to above. Both Courts, therefore, did not commit any error by decreeing the suit.

That being so, I do not find any merit in the instant appeal and the same is accordingly dismissed in *limine*.

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

(VIKRAM AGGARWAL)
JUDGE

September 02, 2025

Rekha

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