

**CM No.14438-C-2010 in/and
RSA No.4852 of 2010 (O&M)**

[1]

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

**CM No.14438-C-2010 in/and
RSA No.4852 of 2010 (O&M)
Date of Decision: 10.12.2015.**

Dhyan Singh

...Appellant

Versus

Karnal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.S. Sangwan, Advocate,
for the appellant.

Mr. Ashish Gupta, Advocate,
for respondents No.1 & 2.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

KULDIP SINGH, J. (ORAL)

CM No.14438-C-2010

The delay of 254 days is sought to be condoned on the ground that his counsel before the Lower Appellate Court did not inform the appellant about the decision of the case. The counsel before the Lower Appellate Court has filed his affidavit through application CM No.14440-C-2010 that he had asked his Clerk to inform the appellant but the Clerk left the job and did not inform the appellant.

In view of the affidavit of the counsel of the appellant

before the Lower Appellate Court, the delay of 254 days in filing the appeal is condoned.

RSA No.4852 of 2010

Plaintiff has filed the suit for declaration to the effect that the mortgage deed No.2156 dated 01.07.1997 executed by his father Ami Lal in favour of defendants No.1 & 2 regarding plot measuring 144 Sq. 9 inches in dispute is without legal necessity. In the written statement, defendants No.1 & 2 had denied the relationship of Ami Lal. They also stated that they had paid the money and a valid mortgage deed was executed.

Suit of the plaintiff was dismissed by the Lower Court on the ground that plaintiff is no longer coparcenary of defendant No.3 and has got no right to challenge the mortgage deed. These findings were affirmed in the appeal.

I have heard learned counsel for the parties and have gone through the file carefully.

The limited prayer of the learned counsel for the plaintiff-appellant is that the Lower Court has made observations in Para No.15 of the judgment that mortgage deed Ex. D1 virtually amounts to sale. The learned counsel has contended that these findings will come in his way when he seeks redemption of the land.

I have gone through the Lower Court file. It was not the case of the defendants No.1 & 2 that mortgage deed Ex. D1 is

virtually a sale.

The perusal of the mortgage deed Ex. D1 shows that it is a mortgage deed where the right to redeem was given. Hence, the findings of the Lower Court as affirmed by the Appellate Court to the effect that mortgage deed Ex.D1 virtually amount to sale to the suit property are hereby set aside.

The present appeal is allowed up to that extent only.

December 10, 2015

Ankur

**(KULDIP SINGH)
JUDGE**