

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

RSA No.3504 of 2011(O&M)

Date of Decision:-06.02.2015

Prem Chand.

.....Appellant.

Versus

Madan Lal.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Amrainder Singh, Advocate for the appellant.

JASWANT SINGH, J.(ORAL)

CM No.9838-C of 2011 has been filed under Section 5 of the Limitation Act seeking condonation of 04 days delay in filing the appeal.

For the reasons stated in the application duly supported by affidavit of appellant himself, the CM is allowed and delay of 04 days in filing the appeal is condoned.

RSA No.3504 of 2011

Plaintiff is in second appeal aggrieved against the judgment and decrees passed by the Court below whereby his suit for declaration with consequential relief of permanent injunction has been dismissed by learned Civil Judge(Jr. Divn.), Ambala vide judgment and decree dated 11.09.2009 and the findings thereof have been affirmed by learned

District Judge, Ambala vide judgment and decree dated 04.05.2011.

Learned Counsel for the appellant has argued that Courts below have not appreciated the oral as well as documentary evidence in the right perspective as it is evident from the fact that there was an oral family settlement between the parties and to prove the said fact the plaintiff had led cogent and convincing evidence and despite that the Courts below have wrongly dismissed the suit for declaration with consequential relief of permanent injunction.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the considered view that the present second appeal is devoid of any merit and the same deserves to be dismissed.

In the present case the plaintiff has based his case on a oral family settlement that allegedly took place between the parties but neither in his pleadings nor in his evidence he has specifically stated about the date on which the oral family settlement took place or the persons who were witnesses to the said oral family settlement. Although, the plaintiff examined PW-4 Baljinder Singh and PW-5 Parvinder Kumar (real brother of the appellant) as the witnesses to the oral settlement. However, in their cross examination they have denied about having any knowledge about the date of settlement or any other person who was present their at the time of oral settlement.

On the other hand defendant has specifically denied the allegations and has alleged that the plaintiff had validly executed the sale deed dated 20.05.1998 (D-1) in his favour. To prove the said fact the

defendant examined Sat Pal as DW-1 who is the witness of the said sale deed. This witness had withstood the rigors of the cross examination and nothing material has come out from the same. Not only this, the plaintiff in his cross examination has admitted the due execution of the sale deed. Perusal of this document would show that plaintiff had received a sum of Rs.2 lac as full and final sale consideration of the land to be sold at home from the defendant. Thus, the argument of learned Counsel for the appellant that this sale deed was executed in pursuance to a oral family settlement whereby the plaintiff was required to transfer the suit land in favour of defendant without any consideration and subsequently the defendant was to transfer his share in favour of the plaintiff is without any merit and based upon no cogent or convincing evidence at all.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

February 06, 2015
Vinay