

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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*C.M. Nos.13697-C of 2015 & 248-C
of 2012 and RSA No. 102 of 2012 (O&M)*

Date of decision: 06.11.2015

Pardeep son of Late Rohtash and others

....APPELLANTS

VERSUS

Smt. Vidya Devi

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.K.Bagri, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 13697-C of 2015

Prayer in this application is for impleading the legal representatives of appellant No. 1, namely, Pardeep son of Rohtash, who died on 02.08.2014 leaving behind his legal representatives, the details of whom have been mentioned in para-1 of the application. Counsel has further stated that appellant No. 5, namely, Smt. Mishro Devi wd/o Late Rohtash also expired during the pendency of the appeal and the legal representatives are the same, as are mentioned in para-1 of the application. He contends that the amended Memo of Parties has been appended along with the application and the application is supported by an affidavit of the wife of appellant No. 1.

In view of the above, the present application is allowed subject to all just exceptions. The legal representatives of appellants No. 1 and 5 are impleaded as appellants, details of whom have been mentioned in para-1

of the application. The amended Memo of Parties appended along with the application is taken on record. Registry is directed to place the same at the appropriate stage of the case.

C.M. No. 248-C of 2012

Prayer in this application is for condonation of delay of 16 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, the present application is allowed. Delay of 16 days in re-filing the appeal stands condoned.

RSA No. 102 of 2012

Challenge in this appeal is to the judgment and decree dated 22.02.2010 passed by the Civil Judge (Junior Division), Rewari, by which the suit for permanent and mandatory injunction filed by the respondent-plaintiff has been allowed, appeal against which preferred by the appellant-defendant stands dismissed by the District Judge, Rewari on 10.06.2011.

2. It is the contention of the learned counsel for the appellant that the Courts below have wrongly proceeded to decide the suit in favour of the respondent-plaintiff without taking into consideration the fact that the plot owned by the appellants-defendants was of the correct dimensions and there is no encroachment made by them. He contends that the evidence, which has been brought on record by the respondent-plaintiff, is not sufficient to prove that he was owner in possession of the property and the encroachment has been carried out by the appellants-defendants. Prayer has, thus, been made for setting aside the impugned judgments and for dismissing the suit of the respondent-plaintiff.

3. I have considered the submissions made by the learned counsel

for the appellant and with his able assistance, have gone through the impugned judgments.

4. The factum that the respondent-plaintiff had purchased 1 Kanal 12 Marlas i.e. 1140 square yards is not disputed. It is also not disputed that the Local Commissioner was appointed by the Court, who had inspected the spot in the presence of the defendant and prepared a site plan Ex. PW1/E, which clearly showed encroachment on the part of the appellants-defendants. As per the report of the Local Commissioner, it was proved that the western boundary of the suit plot was only 28 feet 10 inches and eastern side was 30 feet 6 inches as compared to the actual dimensions i.e. western side 35 feet 4 inches and eastern side 40 feet as shown in the site plan Ex. PW5/B annexed with the sale deed Ex. PW3/B. The appellants-defendants have not been able to rebut this finding recorded by the Local Commissioner, which was in his presence. That apart, no evidence has been produced by the appellants-defendants indicating that there has been no encroachment on their part upon the suit property.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 06, 2015

pj