

RSA No.123 of 2012 (O&M)

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

RSA No.123 of 2012 (O&M)

Date of Decision: August 14, 2015

Phool Singh

...Appellant

Versus

Kaushalya Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Mukesh Yadav, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.311-C of 2012

Prayer in this application is for condonation of delay of 263 days in refiling the appeal which is attributed because of the fact that the counsel for the appellant had shifted his house and during his shifting, the file was inadvertently put in the folder of decided case by the Clerk of the counsel for the appellant. The application is supported by the affidavit of the Clerk of the counsel for the appellant.

For the reasons mentioned in the application, the present application is allowed. Delay of 263 days in refiling the appeal stands condoned.

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Challenge in this appeal is to the judgments and decree passed by the Courts below, whereby, the suit for permanent and mandatory injunction filed by the respondent-plaintiff stands decreed.

It is the contention of the counsel for the appellant that the Courts below have not appreciated the evidence in the right perspective which has led to the miscarriage of justice, He contends that the documents Exs.D-5, D-6 and D-8 clearly indicate that there is rasta-sare-aam which have been ignored by the Courts below and had relied upon Exs.P-1, PW-8/A and PW-9/A. He contends that the findings recorded by the Courts below, thus, cannot sustain.

I have considered the submissions made by the counsel for the appellant and have gone through the records of the case with his assistance.

Both the Courts below have rightly appreciated the evidence as has been referred to therein. Even the Local Commissioner was appointed who, in his report Ex.D-1 and the site plan Ex.D-2, at the time of inspection of the property and site in dispute, indicated that there was no street existing between the house of the respondent-plaintiff and the appellant-defendant. The Local Commissioner's report was substantiated by the site plan Ex.PW-8/A which was prepared at the time of execution of sale deed dated 20.02.1976 (Ex.P-1) in the year 1976 in favour of respondent-

plaintiff and the site plan Ex.PW-8/B was prepared at the time of execution of the sale deed dated 10.04.1964 (Ex.PW-9/A) in favour of Mangat Singh and Hari Singh. Reference has also been made to the certified copy of the judgment passed in Civil Suit No.30 of 2000/2009, decided on 18.03.2010, titled as, 'Saraswati Devi Versus Ganpat etc.' wherein, the wife of the appellant filed a civil suit for permanent injunction against the legal representatives of Ganpat and the same was dismissed and it was held that there existed no street in the West of the house of the appellant. This clearly shows that no street was in existence indeed as has been sought to be projected by the appellant-defendant.

There is no infirmity in the judgments and decree passed by the Courts below which call for any interference of this Court. Further, no substantial question of law arises in this appeal which requires consideration of this Court.

In view of the above, the present appeal stands dismissed.

August 14, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE