

RSA No.400 of 2011 (O&M)

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

RSA No.400 of 2011 (O&M)

Date of Decision: August 18, 2015

Ajit Singh & another

...Appellants

Versus

Kirpal Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Ms. Amandeep Soni, Advocate
for the appellants.

AUGUSTINE GEORGE MASI, J. (Oral):

CM-1089-C-2011

Prayer in this application is for condonation of delay of 269 days in refiling the appeal. The reasons assigned for such a delay is that upon an objection raised by this Court, the paper-book was taken back by the counsel for the applicant-appellants and by mistake, placed the same amongst the briefs of decided cases and therefore, escaped the notice of the counsel as well as his Clerk which resulted in the delay in filing the appeal within the stipulated period for do so. When the applicant-appellants inquired about the case, the file was traced and the appeal was filed. The said application is supported by an affidavit of Clerk of Mr. J.S. Thind, Advocate who had initially filed the appeal.

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For the reasons mentioned in the application, the same is allowed. Delay of 269 days in refiling the appeal stands condoned.

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The appellants-plaintiffs filed a suit for declaration to the effect that they alongwith Bachan Singh-defendant No.1, are jointly cultivating the land, details of which were mentioned in the head note of the suit and on the basis of the family settlement-cum-arrangement-cum-partition deed dated 08.02.1985, they be declared the owners in possession of the land bearing khasra numbers detailed therein measuring 57 kanals 7 marlas situated at village Manawala Khurd, Tehsil and District Amritsar. The said suit was dismissed by the trial Court vide judgment and decree dated 22.10.1998, against which, an appeal was preferred which was also dismissed by the Additional District Judge, Amritsar, vide judgment and decree dated 16.11.2009 resulting in filing of the present appeal.

It is the contention of the counsel for the appellants-plaintiffs that after migrating from Pakistan at the time of partition, the appellants-plaintiffs and respondent/defendant No.1 had started cultivating the suit land which belonged to Atma Singh big land owner. To avoid declaration of the area as a surplus area, he transferred the ownership of the land in favour of his daughter Rupinder Kaur as a result, appellants-plaintiffs and respondent-defendant No.1 became her tenants. As per the policy of

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Government of Punjab, the land was to be transferred in the hands of the tenants who were in possession of land subject to deposit of some amount. Bachan Singh respondent-defendant was the only educated one among them and he persuaded the appellant-plaintiffs to contribute towards the amount which was to be deposited and get the land transferred in his name. An agreement was entered into between the parties dated 08.02.1985, according to which, at a later stage land was to be partitioned between the three. The land ultimately was transferred in the name of Bachan Singh-respondent no.1 who subsequently did not adhere to the partition deed and his name in the revenue records had continued showing himself to be the owner of the land in dispute. This forced the appellant-plaintiffs to file the suit for declaration which has been dismissed.

She submits that the findings recorded by the Courts below cannot be sustained for the reason that the appellants are in possession of the land in question and as per the partition deed dated 08.02.1985, they are entitled to the declaration as owners of the land i.e. 56 kanals 7 marlas. She contends that the Courts below have proceeded to decide the matter against the appellant-plaintiff on the ground that they were unable to prove the partition deed dated 08.02.1985 nor they were able to prove that they had contributed towards the amount which was to be deposited for the land to be transferred in the name of Bachan Singh which findings are not

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sustainable as the original partition deed is in possession of Bachan Singh-respondent no.1 who did not produce the same before the Court and the appellant-plaintiff produced the certified copies of the said partition deed and therefore, the onus was duly discharged by the appellant-plaintiffs. She contends that the Courts below have disagreed themselves and returned the findings against the appellant-plaintiffs which calls interference of this Court.

Having considered the submissions made by the counsel for the appellant-plaintiffs and having gone through the judgments passed by the Courts below, this Court is afraid that contentions raised by her cannot be accepted.

A perusal of the judgments indicates that the appellant-plaintiffs were aware of the fact that the original partition deed dated 08.02.1985 was in the possession of Bachan Singh-defendant No.1 but they did not give any notice to him for production of the original partition deed dated 08.02.1985. Further, the said document was neither attested by any Numberdar, Member of Panchayat nor by Sarpanch of the village. That apart, the certified copies which have been produced if are to be relied upon the requirements as mentioned in Section 65 of the India Evidence Act, have not been fulfilled as no permission has been sought to lead secondary evidence and therefore, the certified copies which have been produced in Court have rightly not been treated to be a part of

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evidence which could be relied upon especially when the original partition deed was available but was not sought to be produced. That apart, the respondents have been able to prove that no contribution has been made by the appellant-plaintiffs for deposit of the amount which resulted in transfer of the land in dispute in the name of Bachan Singh-respondent No. 1. Revenue records also do not depict them to be the tenant in land as all-through it is Bachan Singh who has been shown to be in possession of the land. The jamabandis from the year 1964-65 to 1994-95 support such a contention.

An argument has been raised that as per Ex.P-X khasra girdawaris have been ordered to be corrected in the name of the appellant-plaintiffs from the year 1995 onwards but the matter is pending consideration before the Appellate Authority and the controversy with regard to possession of the land in question was pending adjudication before the Court in the present suit and therefore, Court has rightly not relied upon this khasra girdawaris.

Further, no substantial question of law arises in this appeal which requires consideration of this Court.

This Court finds no merit in the present appeal and therefore, the same stands dismissed.

August 18, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**