

**C.M. NOS.6861 TO 6865 C OF 2012 &
R.S.A. NO.2420 OF 2012**

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

DATE OF DECISION: OCTOBER 06, 2015

Jasbir Singh and others

.....Appellants

VERSUS

M/s Gainda Mal Chiranji Lal

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. S.K.Sharma Budhladawale, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. Nos.6861-6862 C of 2012

C.Ms. are allowed.

**Exemption is granted from filing certified copies of documents,
Annexures A-1 to A-4. True typed and photo copies of said documents are
taken on record.**

C.M. No.6865 C of 2012

**Present is an application under Order 22 Rule 4 of the Code of
Civil Procedure for impleading the applicants as appellants on the basis of
the Will dated 07.06.2001 executed by deceased Khilla Ram, who is stated
to have died on 29.02.2008. As per the Will, 1/4th share each was given to
Jasbir Singh, Gurdip Singh, Mohan Lal and Harminder Kumar @ Ravi. No**

other legal heir is stated to be alive except those mentioned herein above.

The application is supported by an affidavit.

For the reasons mentioned in the application, the same is allowed and Jasbir Singh, Gurdip Singh, Mohan Lal and Harminder Kumar @ Ravi are impleaded as legal heirs of deceased Khilla Ram subject to just exceptions and for the purpose of present litigation only.

C.M. No.6863 C of 2012

Prayer in this application is for condonation of delay of 1145 days in filing the appeal.

A perusal of said application would show that even the date on which the judgement and decree were passed by the Additional District Judge, Panchkula dated 09.01.2009 came to the knowledge of the appellants, has not been mentioned. The reason for the delay which has occurred is the unfortunate demise of appellant-defendant, Khilla Ram. Even the date of death of Khilla Ram is not mentioned in the application. Counsel for the applicant-appellants has, however, referred to C.M. No.6865 C of 2012, which is an application under Order 22 Rule 4 of the Code of Civil Procedure, whereby permission is sought to implead the L.Rs of Khilla Ram as appellants on the basis of a Will alleged to have been executed on 07.06.2001 by deceased Khilla Ram. His date of death is mentioned as 29.02.2008. If that be so, at the time when the appeal before the Additional District Judge, Panchkula, was entertained i.e. 03.10.2007, he was alive.

In view of the inordinate and unexplained delay in filing the present appeal, which has not been explained as is required under the statute, the application seeking condonation of delay deserves dismissal.

C.M. No.6864 C of 2012 & R.S.A. No.2420 of 2012

The appeal was also heard on merits where challenge is to the judgement and decree dated 09.01.2009 passed by the Additional District Judge, Panchkula, vide which the appeal preferred against the judgement and decree dated 31.08.2007 passed by the Civil Judge (Senior Division), Panchkula, dismissing the suit of the respondent-plaintiff for declaring the entries in the revenue record showing Khilla Ram, defendant, to be owner of 1/4th share out of the land measuring 18 biswas comprising in Khasra Nos.294/181 (0-4) and 291/182 (0-14) situated in Kalka as wrong and further for permanent injunction restraining the defendant from seeking partition of the suit property, stands allowed.

It is the contention of counsel for the appellant-defendants that learned lower Appellate Court has not appreciated the evidence and the pleadings and has overlooked the fact that the sale deed dated 05.07.1979 suffered by Smt.Parsanni Devi in favour of Khilla Ram-defendant has not been challenged by the respondent-plaintiff. Since the said sale deed still exists, the judgement and decree passed by the Additional District Judge, Panchkula, dated 09.01.2009 cannot sustain.

This contention of learned counsel for the appellants cannot be accepted in the light of the fact that in Civil Suit No.183 of 26.04.1980 titled as Khila Ram Vs. M/s Gainda Mal Chiranji Lal for possession by way of pre-emption stands dismissed by the trial Court vide judgement, Ex.P5, against which an appeal preferred by him has also been dismissed by District Judge, Ambala on 18.07.1984, Ex.P7, wherein it was held that Smt.Parsanni Devi had ceased to have any share or land whatsoever in Khewat No.30 in the year 1974-75 prior to the sale deed dated 05.07.1979

relating to alienation/sale comprised in Khewat No.30. It has further been observed that the sale deed/alienation has automatically become nonest and a complete nullity in respect of the said property. Even in the jamabandies, which have been placed on record clearly depict that the respondent-plaintiff was owner in cultivating possession of the suit land measuring 18 biswas to the extent of 3/4th share, after having purchased the same from Smt.Shibbi widow of Kapooria i.e. original share holder in the said land. As regards the Jamabandi for the year 1984-85 are concerned, the same also depict Khilla Ram to be co-sharer to the extent of 1/4th share, which were challenged, which in the light of the judgement in Civil Suit No.183 of 26.04.1980 referred to above has rightly been held to be erroneous. The findings, thus, recorded by the Courts below on the basis of said civil suit, which judgement has attained finality upto the Appellate Court, cannot be faulted with.

There is no illegality in the judgement dated 09.01.2009, passed by the Additional District Judge, Panchkula, which would call for any interference by this Court even on merits. The learned Additional District Judge has returned findings after properly appreciating the evidence and there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same deserves dismissal.

In view of the above, this appeal is dismissed as barred by limitation as also on merits.

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Since the main appeal stands dismissed, C.M. No.6864 C of 2012, seeking stay also stands dismissed.

**October 06, 2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**