

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 04.09.2015

**C.M. No. 7197-C of 2012 &
RSA No. 2623 of 2012**

Rajinder Singh

...APPELLANT

VS.

Jai Pal and another

...RESPONDENTS

**C.M. No. 7175-C of 2012 &
RSA No. 2606 of 2012**

Rajinder Singh

...APPELLANT

VS.

Jai Pal and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Karamveer Singh Banyana, Advocate,
for the applicant/appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. Nos. 7197-7175-C of 2012

Prayer in these applications is for condonation of delay of 97 days in re-filing the appeals.

The reason assigned for the delay is that after the Registry raised certain objections, the paper-books were taken back by the clerk of the counsel from the Registry but the same were inadvertently put in other briefs in the office, which were thereafter traced and the appeals were re-filed, which has resulted in delay of 97 days in re-filing the appeals. The applications are supported by the affidavits of the clerk of the counsel.

For the reasons mentioned in the applications, the same are

allowed. Delay of 97 days in re-filing the appeals is condoned.

RSA Nos. 2623 and 2606 of 2012

By this order, I propose to dispose of two appeals i.e. RSA Nos. 2623 and 2606 of 2012, which arise from a common judgment, which was rendered by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri dated 11.09.2008, who had clubbed the cases, and the appeal preferred by the appellant-plaintiff dismissed by the Additional District Judge, Yamuna Nagar on 29.09.2011, whereby the suit of the appellant-plaintiff for declaration that decree dated 06.11.1993 passed by the Civil Judge (Junior Division), Jagadhri is illegal, null and void and liable to be set aside and the impugned sale deed dated 04.01.1999, on the basis of the said impugned decree executed by the respondent-defendant No. 1 in favour of respondent-defendant No. 2 Mittar Sain, deserves to be set aside.

It is the contention of the counsel for the appellant that the Courts below have wrongly proceeded to hold that the property in dispute was not an ancestral property. He further contends that the Will, which has been produced by the respondents-defendants, was not properly executed or proved and, therefore, the judgments and decree passed by the Courts below deserve to be set aside and the appeal allowed.

I have gone through the judgments passed by the Courts below with the assistance of the counsel but do not find any merit in the contentions, which have been raised.

The reason, which has been assigned for not accepting the contention that the property was an ancestral one, is that no cogent evidence was led by the appellant-plaintiff to prove that the property was ancestral in nature, in fact, the witness examined has himself admitted that respondents-

defendants No. 1 and 2 were living separate for the last many years after the partition of the property and there was complete severance in the joint family and, therefore, the joint family had come to an end. No evidence has been led by the appellant-plaintiff to prove that no partition has actually taken place. Further, the Will dated 21.04.1999 Ex. D1 is a registered Will, which has been duly proved by examining one of the witnesses of the Will as also the scribe. All this go to prove that the land was not an ancestral property and the respondents-defendants No. 1 and 2 have rightly become owners of the property on the basis of the decree dated 06.11.1993 and, therefore, could execute the sale deed, which was impugned.

The findings recorded by the Courts below cannot be said to be not based upon proper appreciation of the evidence on record, which has been led by the parties. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be just and reasonable, there is no illegality in the impugned judgments passed by the Courts below which would call for any interference by this Court. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

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

September 04, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE