

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 370 of 2012(O&M)
Date of decision : January 30, 2015

Tek Chand

..... Appellant s

Versus

Sombir and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. N. S. Shekhawat, Advocate
for the appellant.**

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

Amit Rawal, J (oral).
CM No.960-C of 2012

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 136 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 370 of 2012(O&M)

This Regular Second Appeal at the instance of the appellant-plaintiff is directed against the judgment and decree of the lower appellate court 15.3.2011 whereby the judgment and decree of the trial court dated 7.6.2006 has been reversed.

Learned counsel appearing on behalf of the appellant-plaintiff in support of his grounds of appeal submits that the court below has committed illegality and perversity in misreading the oral and documentary evidence on record which exfacie prove the case of the appellant-plaintiff.

I am afraid that the aforementioned argument of the learned counsel for the appellant-plaintiff is devoid of merits for the reasons that as per jamabandi of the year 2002-03 the suit property stood in the name of defendant Nos.1 to 4 and in the jamabandi for the year 1992-93 Ex. P-8 the property was shown in the name of defendant No.5 and there were no documents on the file from where it could be ascertained that the land owned by Sawal Ram was transferred in the name of the plaintiff yet the trial court decreed the suit. However, before the appellate court at the stage of the appeal an application for additional evidence was filed which was allowed and on the basis of additional evidence it has been found that the land measuring 34 Kanals 10 Marlas was transferred in the name of Suresh Kumar s/o Tek Chand son of defendant No.5 by way of judgment and decree Ex. A-1 and rest of the land measuring 68 Kanals 18 Marlas was transferred in the name of other defendant. This fact had not been disclosed by the plaintiff while filing the suit. The appellate court in view of the fact that Tek Chand-plaintiff had already got the share, though the property was transferred in favour of his son he could not lay claim in excess of his share.

The lower appellate court while exercising the jurisdiction under Section 96 CPC discharged the obligation by

referring the additional evidence lead on behalf of the respondent-defendant. It is pertinent to mention here that the appellant-plaintiff did not lead evidence in rebuttal to the evidence lead by way of additional evidence.

The lower appellate court has rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned order of the lower appellate court.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 30 , 2015
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