

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

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Regular Second Appeal No.2593 of 2013 (O&M)

Date of Decision: October 06, 2015

Avtar Singh

...Appellant

Versus

Surjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Umesh Kumar Kanwar, Advocate
with Mr. Vikas Mehsempuri, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.6897-C of 2013

Prayer in this application is for condonation of delay of 81 days
in re-filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of the Clerk of the counsel, the same is allowed.

Delay of 81 days in re-filing the appeal stands condoned.

CM No.6899-C of 2013

Prayer in this application is for permission to lead additional
evidence and in that process to place on record copy of jamabandi for the
year 2008-09 as Annexure A1.

It is the contention of the counsel for the applicant-appellant
that this jamabandi is required and essential for the proper adjudication of
the matter and the issue in question is to be decided on the basis of this
jamabandi and, therefore, it would be necessary.

This contention of the counsel for the applicant-appellant
cannot be accepted firstly that this jamabandi is not the sole document

which would determine the issue in the case. That apart, no justifiable reason has been given as to why the said jamabandi could not be produced by the applicant-appellant during the proceedings pending before the trial Court nor is it the case that this document was not to his knowledge or the same could not be procured by due diligence. At this belated stage, the present application, thus, cannot be accepted.

The same, therefore, stands dismissed.

CM No.6898-C of 2013

Prayer in this application to exempt the applicant-appellant from filing the certified copy of jamabandi Annexure A1.

In the light of the dismissal of the application for leading additional evidence i.e. CM No.6899-C of 2013, the present application also stands dismissed.

RSA No.2593 of 2013

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Malerkotla, dated 01.09.2009, by which the suit for permanent injunction restraining the respondents-defendants 1 and 2, their agents, servants and associates from obstructing the appellant-plaintiff from using 1/4th share of electric motor of 5 horsepower bearing electricity connection account No.2135 AP situated in land measuring 0-4 biswas comprising Khewat Khatauni No.57/1 1 1 Khasra Nos.655min/1/507/34 (0-4) situated in village Falaund Khurd, Tehsil Malerkotla, for irrigating his owned and possessed land to the extent of 1/4th share out of the land, details of which have been mentioned in the head note of the suit, stands dismissed, appeal against the same has also been rejected by the Additional District Judge, Sangrur, on 16.08.2012.

2. It is the contention of learned counsel for the appellant-plaintiff that the electricity connection was in the name of the mother of the parties namely Smt. Bachan Kaur. He contends that the said electric motor was got installed by her out of her own earnings and that of the appellant-plaintiff as well as the respondents. The said amount having been spent collectively, the appellant-plaintiff has a right to use the same for irrigating his land, specially when he has been paying his share of the electricity charges. He, thus, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside.

3. This contention of learned counsel for the appellant-plaintiff cannot be accepted in the light of the fact that after the death of the mother of the parties namely Smt. Bachan Kaur, a compromise was entered into between the parties dated 16.12.2002, which fact is admitted. A suit No.175 dated 20.09.2002 was also filed by the appellant-plaintiff, which on the basis of the compromise entered into between the parties, referred to above, was withdrawn, where he had challenged the hebanama in favour of the respondents-defendants 1 and 2. In the light of the compromise which has been entered into between the parties, the suit having been withdrawn, he cannot at this stage rake up the issue again. That apart, overwhelming evidence has been brought on record by the respondents-defendants, on the basis of which the claim of the appellant-plaintiff has been demolished.

4. On perusal of the impugned judgments and decree, I am of the considered view that the Courts below have returned concurrent findings in detail after properly appreciating the pleadings and the evidence brought on record and there is no misreading or non-appreciation of the evidence, which would call for any interference by this Court.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.6900-C of 2013 stands disposed of as infructuous.

October 06, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**