

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.3495 of 2013

Date of Decision.15.12.2015

2. RSA No.3506 of 2013

Jagdish

.....Appellant

Vs.

Gurdayal Singh

.....Respondent

Present: Mr. Rakesh Nehra, Advocate  
for the appellant.

**CORAM:HON'BLE MR. JUSTICE K. KANNAN**

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?

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**K. KANNAN J. (ORAL)**

1. Both the appeals are connected and they arise between the same parties. RSA No.3495 of 2013 is out of suit instituted by mother against the son Gurdayal contending that an alleged sale said to have been made by her in favour of a son on 21.09.2000 was not valid and that it was brought about by vitiating circumstances. The plaintiff did not live to conclude the trial and she had died on 02.01.2007. No steps had been taken for impleadment by any person claiming an interest in the property and the suit had been dismissed for default of appearance of the plaintiff-mother on 26.02.2007. One of the sons filed an appeal against the judgment with an application for condonation of delay of two years. The Court found that there was no justification for coming on appeal after a delay of two years and dismissed the application as well as the appeal. The said judgment is subject of challenge in RSA

No.3495 of 2013.

2. Simultaneously to the suit instituted by the mother, Gurdayal had himself filed a suit for partition and separate possession claiming his right as a heir to the father who held a half share in 222 sq. yards of property and claiming the whole of the property which the mother owned namely a half share of 222 sq yards namely 111 sq. yards by virtue of a purchase from the mother on 21.09.2000 which incidentally was the subject of challenge brought by the mother during her life time. All the other brothers and sisters were made as parties but initially the mother had not been made as party. The mother impleaded herself as party and contended what she asserted in her own suit and stated that the sale was not valid. At the time when the suit was taken, the Court found that since the mother's suit was dismissed, the judgment rendered would govern the rights of parties and held that the mother had no right to claim the property which she had sold. The suit filed by the plaintiff was dismissed finding that the plaintiff was not able to establish as to how he was entitled to the particular share which he was claiming in the suit. The plaintiff also did not step into the witness box to assert his own claim. The plaintiff Gurdayal did not prefer appeal against the dismissal of his suit but only her another son filed the appeal against the issue that decided in that suit that the mother cannot make any claim with reference to the property especially after her own suit had been dismissed for default. The appeal was also dismissed. It is against that appeal in RSA No.3506 of 2013 has been filed.

3. There were two options open at a time when the plaintiff

who filed the suit was not alive to prosecute it and the result was dismissal of the suit for default. Any representative claiming on behalf of the deceased plaintiff mother could have moved an application for restoration of the suit and pointed out to any delay as resulting from circumstances that could justify the application for restoration of the trial. The other option is to prefer an appeal against the order of dismissal if any ground could be shown that the Court did not have a power to dismiss the suit for default or there were no other justifiable circumstances at all that could be allowed for the Court to dismiss it for default. In this case, if one of the sons as legal representative did not choose to adopt a procedure for restoration with an application to condone the delay but would prefer an appeal with application to condone the delay, the ground of challenge in appeal could be only restricted to whether the Court had flouted any procedure in law and dismissed it without any justifying circumstance. I would notice that the suit had been instituted by the mother on 09.11.2002 and for nearly five years the case was still pending. She was not alive on the day when the case was posted on 26.02.2007, death having resulted on 02.01.2007 and the Court could not have, therefore, allowed further progress in suit unless there was an application moved by person interested in prosecution of the case. The Court had no other option but to dismiss the appeal and if the dismissal was correct, there was no available ground in appeal to challenge the same. There cannot be any argument that he should have an opportunity to have the case reopened unless that opportunity was availed to the appellant by approaching the trial Court itself with an application for restoration as contemplated under

Order 9 Rule 9 CPC as representative of the deceased-plaintiff. The Appellate Court was, therefore, justified in holding that there was no case made for condonation of delay in filing the appeal and also dismissed the appeal as not competent without adequate reasons as to why the representative of the plaintiff could not resort to an action before the very same Court.

4. The judgment which is now brought to challenge in RSA No.3495 of 2013 cannot, therefore, survive for any favourable consideration. It is accordingly dismissed.

5. The counsel says that he is not pressing the appeal in RSA No.3506 of 2013. It is dismissed as not pressed.

**(K. KANNAN)**  
**JUDGE**

**December 15, 2015**  
**Pankaj\***