

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

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Regular Second Appeal No.3766 of 2013 (O&M)

Date of Decision: November 19, 2015

Sadhu Singh

...Appellant

Versus

Shakuntala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Arun Takhi, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10151-C of 2013

Prayer in this application is for condonation of delay of 132 days in re-filing the appeal.

The reason assigned for the delay is that after the filing of the appeal, Registry had raised certain objections and the paper book was taken back by the Clerk of the counsel but he kept it in a wrong brief. Case was traced out and then re-filed after removal of the objections, which resulted in delay of 132 days in re-filing the appeal. The application is supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the same is allowed.

Delay of 132 days in re-filing the appeal stands condoned.

RSA No.3766 of 2013

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Hoshiarpur, dated 09.12.2009, by which the suit filed by the appellant-plaintiff for permanent injunction restraining the respondents-defendants from interfering in any

manner in passage shown in the map attached along with the suit and for issuance of a mandatory injunction directing respondents-defendants 2 to 4 to remove superstructures raised by them on the aforesaid passage, has been dismissed, appeal against which preferred by the appellant-plaintiff also stands dismissed by the Additional District Judge, Hoshiarpur, on 04.02.2013.

2. It is the contention of learned counsel for the appellant-plaintiff that the Courts below have not properly appreciated the pleadings and the evidence brought on record. He contends that as per the report of the Local Commissioner, it is fully established that there has been encroachment upon the passage in question and once such a finding has been given by the Local Commissioner, the said finding should have been accepted. His further contention is that the findings of the Courts below that the demarcation could not be properly carried out because of the non-availability of the *burjis* which were affixed as permanent points during the consolidation proceedings, cannot in itself render the report of the Local Commissioner unreliable. He submits that the encroachment having been established of the respondents-defendants, the injunction as prayed for should have been granted.

3. I have considered the submissions made by learned counsel for the appellant-plaintiff and with his assistance, have gone through the impugned judgments.

4. The contention as raised by the counsel for the appellant-plaintiff cannot be accepted in the light of the admission in cross-examination of PW-1 Tarlok Singh, retired Kanungo, who has himself admitted that there is a 15 feet wide street on the spot and, therefore, there

could not have been any encroachment on the said passage/street, which admittedly has been constructed and is being maintained by the Municipal Committee, Hoshiarpur. After the remand of the case by the Lower Appellate Court, CW Malkiat Singh was appointed as Local Commissioner, who submitted his report, wherein he has categorically stated that there is no *pucca* points which could be taken the basis for identifying the land and specifying as to who has encroached upon the passage/street. He stated that in the absence of the said fixed points, correct demarcation on the spot cannot be carried out. Since the demarcation of the spot is not possible, therefore, the Courts have rightly proceeded to hold that no finding can be returned to the effect that there has been encroachment on the part of the respondents-defendants. The findings as recorded by the Courts below on the basis of proper appreciation of the evidence on record and law, cannot be faulted with.

5. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

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

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.10152-C of 2013, stands disposed of as infructuous.

November 19, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE