

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

105

CM Nos.11082-83-C of 2013 and
Regular Second Appeal No.4098 of 2013

Date of Decision: November 30, 2015

Surjit Kaur

...Appellant

Versus

Harbant Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.S. Sidhu, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.11082-C of 2013 and
RSA No.4098 of 2013

Prayer in CM No.11082-C of 2013 is for condonation of delay
of 1339 days in filing the appeal.

The reason for the said delay is stated to be non-information by
the counsel before the Lower Appellate Court with regard to dismissal of
the appeal preferred by the appellant-defendant. The ground, as has been
mentioned, cannot be accepted as this shows the lethargy and the non-
seriousness on the part of the appellant-defendant in pursuing her own case.
Had she been vigilant enough, she would have enquired from her counsel
about the result of the appeal, which she had preferred.

The ground for the delay, as has been sought to be projected in
the application, cannot be accepted and, therefore, the application deserves
dismissal and consequently, the appeal, however, at the insistence of the
counsel for the appellant, the case has also been heard on merits and on
consideration of the same, this Court does not find any merit in this appeal.

The contention of learned counsel for the appellant is that the findings of the Courts below that the cross-objections are not maintainable as mere declaration has been sought without seeking possession of the land cannot be sustained in the light of the fact that the order of the Settlement Officer Consolidation, Bathinda, dated 07.02.1962 Exhibit D-1 clearly establishes the ownership of the appellant-defendant. He further contends that even if the cross-objections were to be dismissed as not maintainable, however, the alternative relief should have been granted that the independent suit could have been filed by her. He further argues that the findings that cross-objections are barred by limitation, also cannot be sustained as the said order dated 07.02.1962 is still under consideration and has not yet been finalised.

These contentions as raised by the counsel for the appellant cannot be accepted as the Courts below have rightly appreciated the pleadings and the evidence brought on record. It is a settled preposition of law that mere claim for declaration cannot be granted without seeking possession, which has rightly been applied in the case in hand. The contention of the counsel for the appellant to the extent that she cannot claim her possession over the property, also is misconceived as there is nothing in the order, which would indicate as such.

Further the findings with regard to the claim having been barred by limitation as there is a lapse of a period of 35 years, also cannot be faulted with.

The Courts below have rightly considered the pleadings and the evidence which have been brought on record and, therefore, the present appeal is devoid of any merit. Further no substantial question of law arises

in the present appeal which would call for any interference by this Court.

In view of the above, the present appeal stands dismissed as barred by limitation as also on merits.

In the light of the dismissal of the appeal, the application for stay i.e. CM No.11083-C of 2013, stands disposed of as infructuous.

November 30, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE