

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 511 of 2013 (O&M)
Date of decision : October 8, 2015

Hazari

..... Petitioner

Versus

Bharat Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ram Pal Verma, Advocate
for the petitioner.

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. 1378-C of 2013

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 125 days in refiling the appeal is condoned.

The application stands disposed of.

CM No. 1377-C of 2013

This is an application under Section 149 CPC for making good the deficiency in court fee.

The application is allowed.

The appellant is permitted to make good the deficiency in court fee.

CM No. 1379-C of 2013

This is an application under Section 151 CPC seeking exemption.

The application is allowed.

Exemption granted.

CM No. 1380-C of 2013

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 131 days in filing the appeal is condoned.

The application stands disposed of.

RSA No. 511 of 2013(O&M)

The appellant-defendant No.4 has impugned the judgment and decree of both the courts below whereby the suit for declaration to the effect that the order dated 19.11.2002 passed by H.S.E-1, Y.W.S Circle Jind in an appeal filed by the appellant-defendant No.4 regarding withdrawal of the special wari to the garden measuring 110 Kanals in village Kharak Gardian is null and void, has been decreed.

The case of the appellant-defendant No.4 before the trial court was that before passing the impugned order, on an application for withdrawal of extra water supply, no effective opportunity was granted, much less, no show cause notice was

issued. Defendant Nos. 1 to 3 in the suit did not produce on record, much less withheld the same to show that there had been compliance of principles of natural justice. The courts below as per the provisions of Section 114-G of the Indian Evidence Act, 1872 drew an adverse inference.

Learned counsel appearing on behalf of the appellant-defendant No.4 further submits that the order impugned was not passed in compliance of provisions of natural justice, whereby, supply of water to the agricultural land of the appellant was stopped.

He further submits that both the courts below have mis-directed and not taken into consideration that as per the provisions of Section 101 of the Indian Evidence Act, 1872 the fact that the respondents-plaintiffs have failed to discharge the onus. The respondents-plaintiffs had an alternative remedy to file an appeal against the order and not in the manner it has been chosen i.e. by invoking the provisions of Section 9 CPC.

I have heard learned counsel for the appellant and appraised the paper book.

The trial court on the basis of evidence, both oral and documentary found that defendant Nos. 1 to 3 before withdrawal of extra supply of water to the fields of respondents-plaintiffs did not issue any show cause notice. It also found that as per the case set up by the defendant in the written statement, the water supply was in existence from the year 1971. Non-production of record despite being sought, lead to forming an adverse inference.

It is not the case of the appellant-defendant No.4 that by virtue of the impugned order, the extra water supply to his field has been stopped. The case of the respondents-plaintiffs before the trial court was impugning action of withdrawal of extra water supply, in view of the fact that whole of the area was in Nehri Bagh which was provided four times of the extra special wari.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

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

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

October 8 , 2015
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