

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

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Regular Second Appeal No.2471 of 2015 (O&M)
Date of Decision: August 13, 2015

Kaushlya Devi (since deceased) through her Legal Heirs

...Appellant

Versus

Suresh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ranjit Chawla, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

CM No.6472-C of 2015

Prayer in this application is for permission to affix the deficiency in Court fee.

It has been stated that the Court fee of ₹1,500/- has been wrongly affixed while filing the appeal, whereas the Court fee, which was required to be affixed was short by ₹1,088/-. The said deficient affixation of Court fee was not intentional and the deficiency in requisite Court fee of ₹1,088/- has been made good but there is some delay in doing so.

In the light of the averments made in the application, which is duly supported by the affidavit of the Clerk of the counsel, the present application is allowed.

The deficiency in Court fee is made good.

CM No.6473-C of 2015

Prayer in this application is for condonation of delay of 29 days in re-filing the appeal.

For the reasons mentioned in the application, which is

supported by an affidavit, the same is allowed.

Delay in re-filing the appeal is condoned.

CM No.6474-C of 2015

Prayer in this application under Rule 2, Chapter 1, Part C, Volume 5 of the High Court Rules & Orders, is to implead the legal heirs of Smt. Kaushalya Devi, who expired on 21.02.2014 when the appeal was pending before the learned District Judge.

For the reasons mentioned in the application and the details of the legal heirs as depicted in para 2 of the application, which is duly supported by an affidavit of Pardeep, who is son of Kaushalya Devi, the present application is allowed subject to just exceptions.

Legal heirs of appellant Kaushalya Devi, as detailed in para 2 of the application, are impleaded as appellant.

CM No.9193-C of 2015

Prayer in this application is for impleading the legal representatives of Suresh Kumar, who is stated to have died on 04.02.2015 during the pendency of the appeal. The details of the said respondent-Suresh Kumar are detailed in para 2 of the application. The application is supported by an affidavit of Pardeep, who has now been impleaded as legal representative of deceased appellant Kaushalya Devi.

The present application is allowed subject to just exceptions.

Legal representatives of Suresh Kumar, as detailed in para 2 of the application, are impleaded as respondents.

Registry is directed to place the amended memo of parties appended along with the application at the appropriate stage of the case.

RSA No.2471 of 2015

Challenge in this appeal is to the judgment and decree passed by the Lower Appellate Court, vide which the suit preferred by the plaintiff-appellant stands dismissed while allowing the same.

2. It is the contention of the counsel for the appellant that the plaintiff-appellant Smt. Kaushalya Devi filed a suit for recovery of ₹40,000/- on account of damages caused to her house fully detailed in the head note of the plaint along with interest at the rate of 12% per annum. The said suit was decreed by the trial Court on 03.05.2012, against which the appeal preferred by the respondent-defendant Suresh Kumar, was allowed by the District Judge, Bhiwani, vide judgment and decree dated 14.08.2014, dismissing the suit of the plaintiff-appellant. He contends that the findings recorded by the Lower Appellate Court are not sustainable as a well reasoned and fully justified judgment and decree passed by the trial Court has been set aside without appreciating the evidence in its true perspective. He contends that there was a compromise, which was entered into between the parties, which was made the basis for coming to a conclusion that the common wall has been damaged because of the construction undertaken by the respondent-defendant. Once the admission has been made on the part of the respondent-defendant, there was no reason for the Court to have taken a contrary view. The trial Court has rightly appreciated this aspect and proceeded to decree the suit of the plaintiff-appellant. He further contends that the plaintiff has been able to prove the damage to the common wall and, therefore, as a result thereof, the compensation, as has been assessed, should have been granted to him and the suit decreed for recovery of an amount of

₹40,000/-.

3. I have considered the submissions made by the counsel for the appellant-plaintiff and having gone through the impugned judgments, am of the considered view that the assertion of the counsel for the appellant-plaintiff, cannot be accepted.

4. It is not in dispute that the compromise, which has been made the basis for proceeding to decide the suit in favour of the plaintiff by the trial Court, is merely a marked document and has not been duly proved. The document, which has been marked 'A', was only a photocopy and the same has not been duly proved as per the provisions of the Indian Evidence Act, 1872, and, therefore, could not have been made the basis for awarding damages to the plaintiff-appellant as the same is not admissible in evidence. Merely because there was a compromise between the parties before the police authorities would not prove that the document Mark A was the one, which was in question. That apart, plaintiff-appellant did not step into the witness box to depose and her husband Ram Niwas, who appeared as PW-1, has not been examined as a special power of attorney or general power of attorney on behalf of the plaintiff-appellant. Court has, therefore, proceeded not to place complete reliance upon his statement, specially when in cross-examination he has admitted that the house is 60-70 years old and further that the respondent-defendant had not removed the common wall and had got the wall repaired towards the side of the plaintiff-appellant. He has further admitted in his cross-examination that he had never got the wall repaired from his side for the last 50-70 years.

5. The findings, as has been recorded by the Lower Appellate Court by judgment dated 14.08.2014 being on proper appreciation of the evidence on record do not call for any interference by this Court, much so,

when no substantial question of law arises, which requires consideration of this Court

5. The appeal stands dismissed.

August 13, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE