

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

116

Regular Second Appeal No.2535 of 2015 (O&M)

Date of Decision: September 30, 2015

Raj Bala

...Appellant

Versus

Dariya Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jagdish Manchanda, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.6579-C of 2015

Prayer in this application is for condonation of delay of 17 days
in filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of the applicant-appellant, the same is allowed.

Delay of 17 days in filing the appeal stands condoned.

CM No.6580-C of 2015

Prayer in this application is for exemption from filing certified
copies of judgment and decree dated 25.05.2011 passed by the learned Civil
Judge (Junior Division), Karnal and Annexures A-1 and A-2.

Application is allowed.

Exemption from filing certified copies of judgment and decree
dated 25.05.2011 passed by the learned Civil Judge (Junior Division),
Karnal and Annexures A-1 and A-2 is granted subject to just exceptions.

CM No.6582-C of 2015

Prayer in this application is for permission to lead additional
evidence and to produce Annexures A-1 to A-3 copy of jamabandis for the

years 1955-56 to 2002-03, resolution of the Gram Panchayat and photographs to show the ownership of the Gram Panchayat of the land in question.

It is the contention of the counsel for the applicant-appellant that a stand was taken in the written statement before the trial Court that the land belongs to the Gram Panchayat and for decision on this question, the documents Annexures A-1 to A-3 would be essential and, therefore, permission may be granted to produce these documents in additional evidence in the present appeal.

This contention of the counsel for the applicant-appellant cannot be accepted as no explanation whatsoever has been given for non-production of these documents before the trial Court. It is not the case of the applicant-appellant that these documents were not to her knowledge or that they were not available during the trial. Merely because the same are now sought to be produced, the present application cannot be allowed and that too at this belated stage. Further these documents are not necessary for the purpose of determining the real question in controversy between the parties.

In view of the above, the present application stands dismissed.

RSA No.2535 of 2015

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Karnal, dated 25.05.2011, whereby the suit preferred by respondent No.1-plaintiff for possession, has been decreed, which has been upheld by the Additional District Judge, Karnal, by judgment dated 18.02.2015,

2. It is the contention of learned counsel for the appellant-defendant No.1 that the respondent No.1-plaintiff did not appear in the

witness box to support his case and, therefore, the Courts below have wrongly proceeded to decide the suit in his favour.

3. This contention of learned counsel for the appellant-defendant No.1 cannot be accepted in the light of the fact that there are documents on record which prove beyond doubt that the sale deed was executed in his favour qua the property and was got registered by Kundan Singh, Reader of the Court of Shri R.K. Sharma, the then Civil Judge (Senior Division), Karnal, who was appointed as a Local Commissioner on the basis of an agreement to sell dated 03.03.1983 in favour of the respondent No.1-plaintiff. The witnesses, who had appeared on behalf of the appellant-defendant No.1, namely Bhim Singh DW-1, Norattan DW-2, Kulbir Singh DW-3, Hajari Singh DW-4 admitted the execution of the sale deed. The sale deed stands proved as Exhibit P-2 which establishes that the respondent No.1-plaintiff is the owner of the suit property. The Courts have rightly proceeded on the presumption in the light of Section 114 of the Evidence Act that where a document is registered under Section 34 of the Registration Act, it presupposes that the Sub Registrar followed the procedure prescribed for registering a deed. It, thus, cannot be said that it is always essential for the plaintiff to appear in the witness box in support of his/her claim, specially when the document on record and the evidence adduced in the suit establishes the right and ownership, as has been claimed.

4. An assertion has been made that the present suit was barred by the principle of *res judicata* as a suit for permanent injunction was earlier preferred by the respondent-plaintiff on 17.07.2001 regarding the same property, which was dismissed in default on 29.07.2004 but this contention has rightly been rejected by the Courts below by asserting that the nature of

the suits and the reliefs claimed therein were totally different and both the suits were not directly and substantially the same nor were the issues involved therein same. The principle of *res judicata* has, therefore, correctly been found to be not applicable.

5. On perusal of the judgments, which have been passed by the Courts below, it cannot be said that the Courts have either not considered the evidence or misread the same, rather in the considered view of this Court, it has been rightly and properly appreciated and taken note of. The findings recorded by the Courts below cannot, thus, be faulted with.

6. Both the Courts below have returned concurrent findings in detail after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

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

8. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.6581-C of 2015 stands disposed of as infructuous.

September 30, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE