

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

111

Regular Second Appeal No.2661 of 2015 (O&M)

Date of Decision: September 29, 2015

Smt. Sonu

...Appellant

Versus

Raj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vipin Mahajan, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.6766-C of 2015

Prayer in this application is for condonation of delay of 154 days in filing the appeal.

It has been stated that after obtaining the certified copy from the counsel in the trial Court, the appeal was handed over to the present counsel Mr. Vipin Mahajan, Advocate, for filing the appeal but because of serious illness of his father, who suffered brain stroke and needed regular medical treatment/personal care and attention, the appeal could not be filed which resulted in an unintentional and *bona fide* delay of 154 days in filing the appeal. The application is supported by the affidavit.

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

Delay of 154 days in filing the appeal stands condoned.

RSA No.2661 of 2015

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Gurdaspur, dated 04.10.2011 by which the suit for declaration to the effect that the appellant-plaintiff has a share in

the land measuring 28 kanals 12 marlas, the details whereof has been given in the head note of the suit, situated in village Khoba, Hadbast No.200, Tehsil Pathankot, in the name of the respondent-defendant Raj Kumar, which is an ancestral coparcenary property being the daughter of the said respondent-defendant and issuance of an injunction restraining the defendant from alienating and transferring the same, has been dismissed on the ground that she has not been able to prove herself to be the daughter of the respondent-defendant and that the property is not a coparcenary property as no revenue records have been produced in support of the contention and the appeal preferred against the said judgment has also been dismissed by the Additional District Judge, Pathankot, on 02.09.2014.

2. It is the contention of learned counsel for the appellant-plaintiff that the judgments passed by the Courts below cannot be sustained as they have overlooked the statement of the mother of the plaintiff namely Kanta Devi, who appeared as PW-3, where she had specifically stated that the appellant-plaintiff was the daughter of respondent Raj Kumar and was born out of a relationship with him prior to her marriage with Puran Chand, out of which wedlock, Rajni, Satya and Gurbax were born. His further contention is that the appellant-plaintiff has produced her birth certificate Mark 'A' issued by the Additional Registrar, Births and Deaths, Gurdaspur on 24.04.2004, wherein her date of birth is mentioned as 07.06.1976, where her father's name is mentioned as Raj Kumar, who is the respondent-defendant. He contends that apart from this the appellant-plaintiff has also produced Sukhdev Raj PW-1, who is the Lambardar of village Khobe, who has also stated that she was the daughter of Raj Kumar as also Ramesh Pal PW-2. He, thus, contends that the findings recorded by the Courts below

cannot sustain and deserve to be set aside.

3. This contention of learned counsel for the appellant-plaintiff cannot be accepted in the light of the fact that mere bald statement of Kanta Devi (mother of the appellant-plaintiff) would not be enough in the light of her statement in cross-examination which she suffered by admitting that in the ration card and the other documents except for the birth certificate, name of Puran Chand exists as father of the appellant-plaintiff. She also admits that the marriage was performed by Puran Chand as her father. In fact, in the cross-examination, she has not been able to tell the year when the appellant-plaintiff was married. She also admitted that the appellant-plaintiff had always been calling Puran Chand as her father. That apart, PW-1 Sukhdev Raj, Lambardar of village Khobe, in his cross-examination has admitted that he does not know when the appellant-plaintiff Sonu was married. He had no records regarding birth of the appellant-plaintiff. He also stated that Sonu-plaintiff was not born in village Khobe and no records have been produced by the appellant-plaintiff on the file. He had even gone to the extent of saying that he does not know that Rajni, Satya and Gurbax are children of Kanta Devi. Similarly Ramesh Pal, who appeared as PW-2, in his cross-examination, has admitted that Kanta Devi mother of the appellant-plaintiff was residing in the house of Puran Chand. He has also admitted the other aspects with regard to the marriage of the appellant-plaintiff being performed by Puran Chand.

4. As regards the birth certificate, the same has not been proved as is required under the statute as neither the records were summoned to prove the said document nor any evidence in this regard was led. In the absence of any proof with regard to the father being the respondent-defendant when he

has specifically denied the said fact, specially when it has been admitted that no marriage was performed with Raj Kumar and in fact, marriage had taken place with Puran Chand, the findings recorded by the Courts below cannot be faulted with as the same are based upon the pleadings and the evidence led by the parties.

5. 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.

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

September 29, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE