

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

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Regular Second Appeal No.1578 of 2014 (O&M)
Date of Decision: October 19, 2015

Smt. Rama Devi

...Appellant

Versus

Girraj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Johan Kumar, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.3766-C of 2014

Prayer in this application is for condonation of delay of 57 days
in filing the appeal.

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

Delay of 57 days in filing the appeal stands condoned.

RSA No.1578 of 2014

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division), Faridabad, dated 27.09.2012, whereby
suit for mandatory injunction restraining the respondents-defendants from
interfering with the peaceful possession of the appellant-plaintiff, stands
dismissed, against which the appeal preferred by the appellant-plaintiff has
been dismissed by the Additional District Judge, Faridabad, on 25.09.2013.

2. It is the contention of the learned counsel for the

appellant-plaintiff that earlier a suit for permanent injunction was preferred by the appellant-plaintiff, however, despite there being a *status quo* order passed by the Court, the respondents-defendants took over the possession of the property and raised construction thereon, on the basis of which the plaint was amended and accordingly the same is now suit for mandatory injunction directing the respondents-defendants to hand over the vacant possession of the suit property and also for direction to demolish the illegal and unauthorised construction and to remove *malba* of the illegal construction and to hand over the possession of the property to the appellant-plaintiff. He contends that the plot in dispute is 60 square yards residential plot with dimensions of 54 X 10 square feet forming a part of Rectangle No.32, Killa No.7/2 (6-8) in village Unchagoa, Tehsil Ballabgarh, which she got as per a family settlement recorded in the Permanent Lok Adalat, Faridabad, by order dated 15.11.2006, whereby her husband-Vinod Kumar suffered the order. He contends that the respondents-defendants asserted themselves to be the owners of the land in Rectangle No.32, Killa No.16/1, 25/1, Rectangle No.33, Killa No.10/2/2. He further asserts that since the suit was amended, it was mandatory upon the Court to frame fresh issues in the light of the pleadings of the parties. Since no issue as per amended suit has been framed, the Court has wrongly proceeded to decide the case. He, however, could not dispute the fact that earlier an application for appointing a Local Commissioner and another application for framing additional issue were moved by the appellant-plaintiff, which applications were dismissed by the trial Court by orders dated 06.01.2012 and 23.08.2012 respectively, which were accepted by the appellant-plaintiff

as the same have not been challenged. In any case, he contends that the Courts have wrongly proceeded to decide the case without appreciating the evidence, which has been led by the parties.

3. I have considered the submissions made by the learned counsel for the appellant-plaintiff and with his assistance have gone through the judgments passed by the Courts below but am afraid these contentions cannot be accepted.

4. It is not in dispute that with regard to the identity of the property and establishment thereof, an application was moved by the appellant-plaintiff before the trial Court for appointment of a Local Commissioner to measure the suit land, which obviously would mean that the land would be first identified. The said application was dismissed on 06.01.2012. Another application was moved for framing of additional issue, which was dismissed on 23.08.2012 and unfortunately none of these orders passed by the trial Court has been challenged by the appellant-plaintiff and, therefore, she has accepted the said orders. The pleas, which are now sought to be raised by the counsel for the appellant-plaintiff, thus, cannot be taken note of, specially when the learned trial Court and the Lower Appellate Court have dealt with this aspect in detail and have rightly come to the conclusion that no prejudice has been caused to the appellant-plaintiff. Thus, the plea of the learned counsel for the appellant-plaintiff that fresh issue should have been framed by the trial Court after the amendment of the suit, also would not survive as the application for framing additional issues has already been dismissed by the trial Court, which was open to challenge at the discretion of the appellant-plaintiff but she accepted the same. This

Court also is of the considered view that no prejudice, as such, has been caused in the present facts and circumstances of the case on appreciation of the pleadings and the evidence brought on record and, thus, do not call for any interference.

5. As regard the contention of the learned counsel for the appellant-plaintiff that the Courts below have not properly appreciated the evidence brought on record, suffice it to say that the appellant-plaintiff has not been able to prove her case with regard to the ownership of the property, what to say of possession. As a matter of fact, in the cross-examination, the appellant-plaintiff-Smt. Rama Devi has demolished her own case by stating that she was never in possession of the property and that the construction has been raised by the respondents-defendants on the suit property. Her husband-Vinod Kumar, who had appeared as PW-2, has also not been able to prove by cogent evidence in support of the ownership of the suit property, which is stated to have been transferred in the name of his wife on the basis of a family settlement recorded in the Permanent Lok Adalat by order dated 15.11.2006.

6. Respondents-defendants, on the other hand, have produced cogent documentary and oral evidence showing their ownership and possession on the property in dispute and thus, the findings recorded by the Courts below cannot be faulted with.

7. 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.

8. No substantial question of law is involved in the present

appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.3767-C of 2014, stands disposed of as infructuous.

October 19, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**