

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

C.M. NOS.10920-921 C OF 2015 &

R.S.A. NO.4550 OF 2015

DATE OF DECISION: DECEMBER 04, 2015

Dharambir

.....Appellant

VERSUS

Jasbir and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. Sant Dharamveer Chotivala,
appellant in person.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.10920 C of 2015

**Present is an application for condonation of delay of 73 days in
refiling the appeal.**

**As per the appellant, the said delay has occurred because when
the appeal was returned with some objections, he inadvertently put the same
in wrong case file and lateron, after great efforts, located the same on
29.08.2015. He contends that the said delay is unintentional and bonafide.**

**For the reasons mentioned in the application, which are duly
supported by an affidavit of the appellant, delay of 73 days in refilling the
appeal stands condoned.**

C.M. No.10921 C of 2015 & R.S.A. No.4550 of 2015

Challenged in this appeal is to the judgement and decree dated 22.09.2012 passed by the Civil Judge (Junior Division), Sonipat, whereby the suit for declaration with consequential relief of permanent injunction filed by the appellant-plaintiff against the respondent-defendants that sale deed bearing No.3056 dated 10.07.2007 and the subsequent revenue entries on the basis of this sale deed is illegal, null, void, nonest and not binding on the rights of the appellant-plaintiff and that he is the absolute exclusive owner of the suit property, with a further relief of permanent injunction, restraining the respondent-defendants from alienating the suit property and from dis-possessing the appellant-plaintiff from the suit property or raising construction thereon stands dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the Additional District Judge, Sonipat on 25.02.2015.

It is the contention of the appellant-plaintiff, who appears in person, that the judgements and decree passed by the Courts below cannot sustain as the same are not in consonance with the pleadings and the evidence brought on record. He contends that he had appeared as PW2 and reiterated his claim over the property by asserting that the disputed property i.e. plot measuring 100 Sq. Yards situated in *Abadi Deh* of *Lal Dora* of village Harsana Kalan is his ancestral property with a house, which was owned by him. He further stated that upto September 2002, he was residing in the same. However, lateron, the said house got demolished due to heavy rains and because of paucity of funds, he could not reconstruct the same.

The house is still lying in a dilapidated condition. For proving the ownership of the property, the appellant-plaintiff had moved an application to the Tehsildar, Sonipat, so that his ownership over the house could be verified. The said application was marked to the Patwari, who further forward the same to the Lambardar of the Village, who reported that the appellant-plaintiff was the owner of the property. On the basis of the said report, the Tehsildar verified the possession and ownership of the house of the appellant-plaintiff. This report dated 24.05.2001 is Ex.P-2. He, thus, contends that in the light of statement of his brother, Ram Kumar (PW1), his statement as PW2 and Ajad Singh, Halqa Patwari (PW3) as also on the basis of the site plan of the property, Ex.P1 and application/certificate, Ex.P2 issued by the Tehsildar, his ownership stands established on the disputed property. Accordingly, a prayer has been made that the findings as recorded by the Courts below to the effect that the appellant-plaintiff has not been able to establish the ownership over the property in dispute cannot sustain and deserves to be set-aside and his suit decreed.

I have considered the submissions made by the appellant in person and have gone through the impugned judgements.

It is not in dispute that the onus to prove that the property in question was the ancestral house of the appellant-plaintiff and that he was owner in possession thereof and residing in the same till September 2002 was upon him. Although the evidence which has been produced by the appellant-plaintiff, at the first blush, indicates that he has placed on record some evidence, which would show that he was owner in possession of the house in dispute but the said evidence fall on the ground as Madan son of

Suraj Mal, Lambardar of the village, who had appeared as DW4, stated in his report (Ex.P2) that the house about which he had reported and verified the appellant-plaintiff to be the owner in possession of the house, was some other house and not the one which is in dispute in the present case. Ajad Singh, Halqa Patwari (PW3) had verified the ownership and possession of the suit property on the basis of this very report of the Lambardar and has also categorically stated in his evidence that he has made his report only on the basis of the report of Lambardar. The application, Ex.P2, on which the said report had been given by the Tehsildar is on the basis of verification done by Halqa Patwari Ajad Singh (PW3). Further, the application of the plaintiff does not give any dimensions/boundaries/description of the house qua which the verification was sought by the appellant-plaintiff. In the report of the Lambardar or Patwari, neither any description, dimensions or boundaries have been mentioned nor any particulars of the property about which the verification was carried out by them, have been given. The appellant-plaintiff has also not denied that he is not owning or is in possession of any other property in the village other than the one in dispute in the present case. The verification report, therefore, cannot be said to be relatable to the property in question. Apart from this, no other evidence has been produced on record, which would either indicate ownership or possession of the appellant-plaintiff over the suit property.

The appellant-plaintiff has asserted that the property is an ancestral property and he had been residing in the same till September 2002 but to prove his possession he has not produced any ration card, voter card or any other proof showing his residence in the suit property. Thus, the

findings as recorded by the Courts below on the basis of the above discussed evidence cannot be faulted with as the Courts are correct in concluding that the appellant-plaintiff has miserably failed to prove his ownership or possession over the suit property and as such, he is not entitled to the declaration as prayed for by him in the suit.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

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

Since the main appeal stands dismissed, C.M. No.10921 C of 2015 for staying the operation of the impugned judgement and decree is also dismissed.

December 04, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE