

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

109

Regular Second Appeal No.2510 of 2014 (O&M)

Date of Decision: November 03, 2015

Dharam Pal

...Appellant

Versus

Itwari Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anuj Balian, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.-5926-C of 2014

Prayer in this application is for condonation of delay of 70 days
in re-filing the appeal.

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

Delay of 70 days in re-filing the appeal stands condoned.

RSA No.2510 of 2014

Challenge in this appeal is to the judgment and decree passed
by the Additional Civil Judge (Senior Division), Naraingarh, dated
23.12.2010, by which the suit filed by the appellant-plaintiff for possession
by way of ejectment of respondent-defendant from the house, details of
which are mentioned in the head note of the suit, has been dismissed on the
ground that sale deed dated 04.06.1936 Exhibit P-8 does not correlate with
the site plan, which has been produced on record and the appeal preferred
against the dismissal of the suit, has also been dismissed by the Additional
District Judge, Ambala, on 16.09.2013.

2. It is the contention of learned counsel for the appellant-plaintiff

that the respondent-defendant has not disputed the factum that the appellant-plaintiff is the owner of the property as detailed in the suit. He contends that once the ownership of the property is not disputed by the respondent-defendant, the prayer made in the suit, should have been accepted and the decree as prayed for, granted.

3. I have considered the submissions made by learned counsel for the appellant-plaintiff and with his assistance have gone through the judgments passed by the Courts below.

4. The contention raised by learned counsel for the appellant-plaintiff cannot be accepted in the light of the fact that it is the specific case of the respondent-defendant that the property in his possession is not the one, which is mentioned in the civil suit. If that be so, the onus was on the appellant-plaintiff to prove that the property in question, which is the subject matter of the sale deed dated 04.06.1936 Exhibit P-8, was the same as was the subject matter of the suit, which onus the appellant-plaintiff has failed to discharge as there is categorical findings recorded by both the Courts below that the appellant-plaintiff has not been able to correlate the dimensions and the site and the property, which was purchased by him on 03.01.1935 with that of the map/site plan, which has been attached along with the suit and mentioned in the head note of the suit. The Courts below have rightly appreciated the pleadings and the evidence led by the parties and the conclusions reached on such consideration are fully justified.

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.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.5928-C of 2014, stands disposed of as infructuous.

November 03, 2015

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE