

RSA No.4183 of 2014 (O&M)

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

RSA No.4183 of 2014 (O&M)

Date of Decision: August 25, 2015

Sukhdev Singh

...Appellant

Versus

Simarjit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. R.K. Arya, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.9692-C of 2014

Prayer in this application is for condonation of delay of 59 days in refiling the appeal.

The reasons assigned for the delay are that initially, the appeal was filed within the limitation period but Registry has raised certain objections and returned the file on 05.03.2014. After removal of those objections, appeal was again filed on 19.03.2014 but the same was again returned by the Registry with some more objections on 15.04.2014. After that, Clerk of the counsel for the applicant-appellant had, inadvertently, bundled the paper-book with some other cases which resulted in the delay in refiling the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of the Clerk of counsel for the applicant-

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appellant, the present application is allowed. Delay of 59 days in refiling the appeal is condoned.

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Challenge in this appeal is to the judgments and decree passed by the Courts below by which the suit for possession as owner by means of specific performance of an agreement to sell dated 18.06.2008 of land measuring 6 Kanals 13 Marlas i.e. 133/3608 share out of the land measuring 180 Kanals 8 Marlas comprised in Khewat No.49 Khatauni No.239, Rectangle No.26 with various khasra numbers as detailed in the heading of the suit, situated in the revenue estate of village Athwal, Hadbast No.458, Tehsil and District Gurdaspur, with consequential relief of suit for permanent injunction restraining the respondent-defendant from interfering into the possession of the appellant-plaintiff, has been dismissed.

It is the contention of the counsel for the appellant-plaintiff that an agreement to sell dated 18.06.2008 (Ex.P-1) was entered into between the appellant-plaintiff and respondent-defendant. The said agreement to sell was qua 10 Kanals 19 Marlas. The date of execution of the sale was 18.07.2008. On the said date, the appellant-plaintiff had attended the office of Joint Sub-Registrar, Naushera Majja Singh, Tehsil and District Gurdaspur, alongwith the balance sale consideration and other expenses to get the sale of the suit land executed and registered in his favour, but the respondent-

defendant did not turn up.

In the meantime, it so happened that in a pending suit which was filed by the parents of the respondent-defendant, was decreed on 08.08.2008 by the Court of Civil Judge (Senior Division) Gurdaspur, according to which, she was divested of the right of ownership of the property. The appeal against the said judgment and decree was pending. In the meanwhile and during the pendency of the appeal, Sulakhan Singh, father of the respondent-defendant, died which resulted in the property i.e. 6 Kanals 13 Marlas of land being delved on the respondent-defendant by way of inheritance. It is, on the basis of this ownership which she attained, the present suit has been filed qua the said land for specific performance on the basis of the agreement to sell dated 18.06.2008. Counsel, thus, contends that since the stand of the respondent-defendant was that she was always ready and willing to execute the agreement to sell dated 18.06.2008 qua the land in question i.e. 6 Kanals and 13 Marlas, the suit of the appellant-plaintiff deserves to be decreed.

This contention of the counsel for the appellant-plaintiff cannot be accepted in the light of the fact that the respondent-defendant was not the owner in possession of the property in question. It is apparent that a suit qua ownership of the land, which was the subject matter of the agreement to sell dated 18.06.2008, was pending before the Civil Court, was decreed on 08.08.2008, because of which, she ceased to be the owner of the property. The

principle of *lis pendens* would apply to the property in question and therefore, the said land could not be sold by respondent-defendant. Merely because, she had now inherited 6 Kanals and 13 Marlas, out of the total land, which was in the ownership of her father, would not confer any right upon the appellant-plaintiff to pray for the specific performance of an agreement dated 18.08.2008 qua this land.

Both the Courts below have returned concurrent findings after properly appreciating the evidence 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.

August 25, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**