

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**RSA No. 4303 of 2014 (O&M)**  
**Date of decision : November 19, 2015**

**Sukhwinder Kaur and others**

**..... Appellants**

**Versus**

**Mohinder Singh and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Anil Chawla, Advocate  
for the appellants.

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

**Amit Rawal, J (oral).**  
**CM No.9956-C of 2014**

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 5 days in filing the appeal is condoned.

The application stands disposed of.

**CM No.9957-C of 2014**

This is an application under Order 22 Rules 3 read with Section 151 CPC for bringing on record the legal representatives of Gurdip Singh who is stated to have died on 19.2.2014. The legal representatives of the appellant No.1-Gurdip Singh are permitted to

be brought on record subject to all just exceptions.

Registry is directed to make necessary correction in the Memo of Parties.

The application is disposed of.

**RSA No. 4303 of 2014 (O&M)**

The appellants-plaintiffs are in Regular Second Appeal against the concurrent finding of fact whereby the suit for declaration and permanent injunction has been dismissed.

Learned counsel appearing on behalf of the appellants-plaintiffs submits that the suit for partition between the parties to the *lis* is pending. The trial court and the lower appellate court have erroneously dismissed the suit.

I have heard learned counsel for the appellants and appraised the paper book.

The appellants-plaintiffs in order to claim declaration with regard to 3/8<sup>th</sup> share in the property measuring 32 Kanals 9 Marlas have only placed on record the photocopies of the sale deed and the Will. They have not been proved and but marked as Mark 'A' and 'B'.

In the absence of original Will, both the courts below found that the appellants-plaintiffs have not been able to prove ownership/claim of 3/8<sup>th</sup> share. In the present appeal, an application under Order 41 Rule 27 CPC has been filed to place on record original documents. In my view, such an effort/attempt amounts to filling up the lacuna if allowed, would tantamount to de novo trial. Since the partition suit is pending, it would be open to the appellants-

plaintiffs to claim ownership and their respective share.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**November 19 , 2015**  
**archana**