

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

120

Regular Second Appeal No.4478 of 2014 (O&M)
Date of Decision: September 08, 2015

Jasbir Singh

...Appellant

Versus

Kulbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Toor, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10374-C of 2014

Prayer in this application under Section 149 CPC is for permission to make good the deficiency in the Court fee.

In the light of the fact that the deficiency in the Court fee has been made good and the application is supported by the affidavit, the same is allowed.

Deficiency in Court fee is permitted to be made good.

CM No.10375-C of 2014

Prayer in this application is for condonation of delay of 574 days in re-filing the appeal.

The reason assigned for the delay in re-filing the appeal is that after the appeal was filed within time, certain objections were raised by the Registry. The Clerk after collecting the case file misplaced the same in the office which was with great difficulty traced out. The appeal was re-filed which resulted in the delay of 574 days. Affidavit of the Clerk of the counsel has been filed in support of this assertion as made in the application.

For the reasons mentioned in the application, the same is allowed.

Delay of 574 days in re-filing the appeal stands condoned.

RSA No.4478 of 2014 (O&M)

Challenge in this appeal is to the judgments and decree passed by the Courts below by which the suit for permanent injunction restraining the defendants from changing the nature of the agricultural land and also from converting the user of land in any manner whatsoever qua the joint property, details of which have been mentioned in the head note of the suit, situated in village Hasanpur, Tehsil and District Jalandhar, till the land is partitioned, stands dismissed.

2. It is the contention of the counsel for the appellant-plaintiff that the findings recorded by the Courts below that the injunction as prayed for cannot be granted as the co-sharers are also in joint possession of the property and the relief thus cannot be granted cannot be sustained as the appellant-plaintiff did not press for the said issue, he was only concerned with regard to the trees which were abutting his house which are in his exclusive possession, therefore, the judgments passed by the Courts below cannot be sustained and deserve to be set aside.

3. This contention of the counsel for the appellant-plaintiff cannot be accepted as the Courts below have gone through the pleadings and the evidence which has been led by the parties. The findings recorded in the judgments are based upon proper appreciation of the evidence according to which it has nowhere come on record that the appellant-plaintiff is in exclusive possession in any portion of the land in question. It is a joint ownership property and, therefore, all co-sharers have equal right of

possession and ownership of the said land till it is partitioned. It is also admitted that till date the partition of the land has not taken place. As a matter of fact, as per the pleadings, the appellant-plaintiff wanted to restrain the respondents-defendants from constructing their houses in the property in question, which could not have been accepted in the light of the fact that he had himself constructed a house in the said property and was wanting the land to be retained as an agricultural land despite the ownership of the respondents-defendants not being disputed on the said land. The findings recorded and the judgments passed by the Courts below are in accordance with law and do not call for any interference by this Court as it is a settled preposition of law that an injunction cannot be granted against the co-sharer(s) unless there is exclusive possession of the property with the plaintiff, who has approached the Court for such an injunction. That being the judgments passed by the Court below deserve to be upheld.

4. 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.

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

6. In the light of the dismissal of the appeal, the application for stay i.e. CM No.10376-C of 2014, also stands dismissed.

September 08, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE