

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

114

Regular Second Appeal No.5352 of 2014 (O&M)

Date of Decision: October 29, 2015

Dhara Singh

...Appellant

Versus

Smt. Sharda and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Ashok Kaushik, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.12659-C of 2014

Prayer in this application is for condonation of delay of 30 days
in filing the appeal.

For the reasons mentioned in the application, which is duly
supported with the affidavit of the applicant-appellant, the present
application is allowed.

Delay of 30 days in filing the appeal stands condoned.

RSA No.5352 of 2014

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Senior Division), Palwal, dated 28.11.2011, whereby the
suit preferred by the appellant-plaintiff and perma respondent No.2 for
declaration to the effect that they are owners in possession of 2/3rd share of
agricultural land measuring 107 kanals and 7 marlas which comes to 71
kanals 10 marlas, situated within the revenue estate of Palwal and are in
cultivating possession as per their share. Challenge was also to the
judgment and decree dated 19.05.1988 passed in favour of respondent No.1-

defendant stating it to be illegal, null and void as there was no family settlement ever, which took place between the parties and respondent No.1-defendant had practiced fraud on the Court and got the impugned judgment and decree, which fact was not revealed by them for the last more than 17-18 years, stands dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the Additional District Judge, Palwal, on 20.03.2014.

2. It is the contention of learned counsel for the appellant-plaintiff that the Courts below have not properly appreciated the pleadings and the evidence brought on record. There was cogent and convincing evidence to prove that the fraud has been played by respondent No.1-defendant and the judgment and decree is a procured one by impersonation and the consequential mutation also deserves to be set aside.

3. Having considered the submissions made by the counsel for the appellant-plaintiff and on going through the judgments passed by the Courts below with his assistance, I am of the considered view that the Courts below have properly appreciated the pleadings and the evidence brought on record.

4. As a matter of fact, there has not been any convincing and cogent evidence brought on record, which would indicate any fraud having been played upon the Court by respondent No.1-defendant. The Courts below have rightly dismissed the suit being barred by limitation and the principle of *res judicata* has rightly been invoked. There is no illegality or misreading of evidence which would call for any interference by this Court.

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.12660-C of 2014, stands disposed of as infructuous.

October 29, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**