

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

105

Regular Second Appeal No.5380 of 2014 (O&M)

Date of Decision: December 03, 2015

Kedar Nath

...Appellant

Versus

Shyam Sunder and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gorakh Nath, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.12743-C of 2014

Prayer in this application is for condonation of delay of 33 days
in re-filing the appeal.

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

Delay of 33 days in re-filing the appeal stands condoned.

RSA No.5380 of 2014

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Senior Division), Narnaul, dated 12.08.2011, whereby
the appellant-plaintiff had filed a suit for declaration to the effect that he
was owner in possession of the land measuring 1 bigha and 19 biswas i.e.
1/5th share out of the land measuring 9 bighas and 18 biswas, which is
jointly owned and possessed by the parties as co-sharers. The said claim
was based upon a oral family settlement, which according to the plaintiff,
has taken place 13 years prior to the date of filing of the suit but the same
has not been given effect to by incorporation in the revenue record. The
claim of the appellant-plaintiff was admitted by all the respondents-

defendants except respondent-defendant No.3-Manoj Kumar, who contested the suit by asserting that there was no oral family settlement and that he is entitled to declaration to the effect that he is owner in joint possession of the suit land i.e. 1/50th share out of the land situated at Narnaul and 1/100th share in the land situated at Amarpur Jorasi. On the basis of the pleadings and the evidence led by the parties, the trial Court came to the conclusion that except for the oral assertions of the plaintiff about the oral family settlement, there is nothing written or documentary evidence establishing the same, thus, disbelieving the same dismissed the suit of the plaintiff, whereas the counter claim of the respondent-defendant No.3-Manoj Kumar stood accepted and decreed, appeal preferred by the appellant-plaintiff against the said judgment and decree stands dismissed by the Additional District Judge, Narnaul, on 03.05.2014, which has led to the filing of the present appeal.

2. It is the contention of learned counsel for the appellant-plaintiff that the Courts below have not taken into consideration the oral evidence led by the parties, specially when it was asserted that there was an oral family settlement entered into between the parties. His further contention is that since the appellant-plaintiff has been able to establish on the basis of his own assertion and the admission on the part of the respondents-defendants except respondent-defendant No.3-Manoj Kumar the said oral family settlement, which should have been accepted by the Courts below and the suit of the appellant-plaintiff decreed. He, thus, contends that the judgments and decree passed by the Courts below deserve to be set aside.

3. This contention of learned counsel for the appellant-plaintiff, on consideration, is found to be not acceptable as perusal of the judgments

impugned would show that the Courts below have rightly considered the pleadings and the evidence brought on record. It is not in dispute that no documentary evidence has been brought on record, which would prove the oral family settlement, specially when the same has not been given effect to in the revenue record. The counter claim, as has been accepted and the relief granted to the respondent-defendant No.3-Manoj Kumar, is as per his entitlement as he is admittedly a co-sharer along with the appellant-plaintiff and other respondents-defendants.

4. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties 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.12744-C of 2014, stands disposed of as infructuous.

December 03, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE