

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

109

Regular Second Appeal No.5462 of 2014 (O&M)

Date of Decision: October 21, 2015

Jaswinder Kaur

...Appellant

Versus

Bakhshish Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Anupam Bhardwaj, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.12921-C of 2014

Prayer in this application is for condonation of delay of 14 days
in re-filing the appeal.

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

Delay of 14 days in re-filing the appeal stands condoned.

CM No.12922-C of 2014

Prayer in this application is for condonation of delay of 72 days
in filing the appeal.

It has been stated that the applicant-appellant is a widow and
was not intimated by her counsel about the fate of the case nor was certified
copy supplied to her by the Clerk of the counsel in the Lower Appellate
Court. The moment she came to know about the said fact, she applied for
the certified copy and on receipt thereof, approached the counsel. Since this
Court was closed for the summer vacations, the appeal has been filed after
reopening, which has resulted in delay of 72 days in filing the appeal. The

application is duly supported by the affidavit of the applicant-appellant.

In view of the above, the present application is allowed.

Delay of 72 days in filing the appeal stands condoned.

RSA No.5462 of 2014

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Hoshiarpur, dated 06.09.2011, whereby the suit preferred by the appellant-plaintiff for declaration and permanent injunction has been dismissed on the ground that the land in dispute being a joint property, the suit was not maintainable as other co-sharers have not been impleaded as party-defendant to the suit and the appeal preferred against the same has also been dismissed by the Additional District Judge, Hoshiarpur, on 01.02.2014.

2. It is the contention of learned counsel for the appellant-plaintiff that as per the jamabandi for the years 1969-70 and 1989-90, the share of the appellant-plaintiff in respect of Khasra No.5381/3589 to 3591 is reflected to the extent of 46 kanals 15 marlas but from the year 1994-95, the share of the appellant-plaintiff in respect of these very Khasra numbers have been reduced to 41 kanals and 1 marla out of the total area of 62 kanals 17 marlas, thus, reducing the total area in the share of the appellant-plaintiff by 5 kanals and 14 marlas. The said error in the jamabandi continued till the year 1999-2000 and the subsequent jamabandi. This change according to the appellant-plaintiff has been brought out at the instance of and in connivance with the revenue authorities by Bakhshish Singh, respondent-defendant No.1, who had got the Khasra Girdawaris changed through the Assistant Collector 2nd Grade/Tehsildar, Hoshiarpur, in an illegal manner without any notice to the appellant-plaintiff. He contends that since the

primary grouse was against respondent-defendant No.1, who has been impleaded as a party and it was on the basis of his *mala fide* intention that such an exercise has taken place, the conclusions which have been drawn by the Courts below that the other co-sharers should have also been impleaded as a party to the suit, cannot be said to be justified and is not sustainable in law.

3. This contention of learned counsel for the appellant-plaintiff cannot be accepted as it is an admitted fact that the original owner was one Shri Pohlo Ram. He had four sons namely Jamiat Singh, Haria, Goni and Rikhi and the land was to be equally distributed amongst them. Out of them, Rikhi died issueless and the said land was also shared by the other three brothers in equal shares. As per the entries in the jamabandi for the years 1969-70, 1989-90, the said shares were reflected in the said entries. It is asserted that it is at a later stage in the year 1994-95 and the subsequent jamabandi, the share of the appellant-plaintiff has been reduced. As per the stand of the appellant-plaintiff, the land is unpartitioned and since it has come to the legal heirs of Pohlo Ram, all the legal heirs are required to be a party to the suit as the relief of declaration and permanent injunction, as has been sought by the appellant-plaintiff, would effect their rights as well. The findings, thus, recorded by the Courts below cannot be faulted with and the same are upheld.

4. 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.

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.12923-C of 2014, stands disposed of as infructuous.

October 21, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**