

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

**RSA No.3110 of 2011
Date of Decision.17.10.2016**

Matadeen and othersAppellants

Vs

Bhawani Dass and othersRespondents

2. RSA No.3948 of 2016 (O&M)

Matadeen and othersAppellants

Vs

Satish Kumar and othersRespondents

Present: Mr. J.S. Brar, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Arjun Veer Sharma, Advocate
for respondent Nos.44 to 46 in RSA No.3110 of 2011 and
for respondent Nos.1 to 3 in RSA No.3948 of 2016.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Notice of motion in the application for condonation of delay as
well as in the regular second appeal bearing No.3948 of 2016.

Mr. Arjun Veer Sharma, Advocate accepts notice for the
respondents No.1 to 3.

This order of mine shall dispose of two regular second appeals.
RSA No.3110 of 2011 has been filed against the judgment and decree
rendered by the lower Appellate Court whereby the claim of the plaintiffs
qua declaration of having become owner under the provisions of Sections 5
and 8 of the Punjab Tenancy Act, 1887, has been declined, in essence, the
appeal filed by the plaintiffs against finding rendered by the trial Court

dismissing the relief of declaration, has been upheld and other RSA bearing No.3948 of 2016 is against the judgment and decree passed by the lower Appellate Court whereby the appeal filed at the instance of the defendants challenging the finding of the trial Court granting the relief of permanent injunction, has been allowed, in essence, the suit of the plaintiffs has been dismissed in toto.

RSA No.3948 of 2016 is also accompanied by an application seeking condonation of delay of 1836 days, owing to the fact that the applicant/appellant was under the impression that both the appeals have been disposed of by virtue of common/composite decree whereas this fact was brought to the notice of this Court by Mr. Arun Jain, learned Senior Counsel on the previous date of hearing on 15.07.2016 and on the adjourned date, showed to this Court a separate decree whereby the appeal bearing No.47 of 2006 filed by the defendant has been disposed of by way of a separate decree.

Mr. J.S. Brar, learned counsel appearing for the appellants submits that it is owing to the aforementioned inadvertence, delay of 1836 days has occurred. No prejudice would be caused to the other side in case the application for condonation of delay is allowed, as it was not an willful or intentional act, as the other connected appeal was filed within the period of limitation.

Per contra, Mr. Arun Jain, learned Senior Counsel assisted by Mr. Arjun Veer Sharma, Advocate submits that ignorance of law is not a bliss, for, once there is a separate decree disposing of the appeal aforementioned, the plaintiff was duty bound to impugn the same by way of separate appeal. In support of his contention, he relies upon the judgment of

Hon'ble Supreme Court in **Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others 2014(4) RCR (Civil) 920.**

He further submits that this fact was in the knowledge/notice of the appellant-plaintiff and therefore, cannot be granted the benefit of condonation of delay as the filing of the appeal belatedly was an intentional and willful act, thus, urges this Court for dismissal of the application and appeal with exemplary costs.

On merits, Mr. Brar, learned counsel appearing for the appellants submits that the appellants have instituted the suit for declaration and consequential relief of permanent injunction seeking ownership on the basis of being occupancy tenants without payment of rent by invoking the provisions of Section 5 and 8 of the 1887 Act. Numerous jamabandies, as noticed by both the Courts below, have been brought on record which show the continuous and uninterrupted possession. The trial Court declined the relief of declaration, but granted injunction on the premise that appellants have been in long and settled possession and could not have been dispossessed except by due course of law whereas the lower Appellate Court has allowed the defendants' appeal on the premise that injunction against the true owner cannot be granted which is not correct appreciation of law in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs (2004) 1 SCC 769**, thus, urges this Court for setting aside the judgment and decree under challenge by formulating the substantial questions of law as drawn in the memorandum of appeal.

Per contra, Mr. Jain, learned Senior Counsel appearing for the respondents submits that the jamabandies have been placed on record since

1951-52 onwards till filing of the suit but jamabandies, if read conjointly, would not show the continuous and uninterrupted possession and there is breakage and therefore, the case does not fall within the aforementioned provisions, rightly so, the Courts below have declined the declaration and the judgment and decree passed by the lower Appellate Court is perfectly legal and just, rightly so, the claim *viz-a-viz* declaration as well as permanent injunction has been dismissed, thus, urges this Court for dismissal of the aforementioned appeals.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is some force in the submissions of Mr. Brar *viz-a-viz* granting of injunction as per the documentary evidence as noticed above finding the plaintiff in long, continuous and settled possession. The aforementioned view of mine is fortified from the ratio decidendi culled in the judgment of Hon'ble Supreme court in **Rame Gowda 's case** (supra). In my view, the finding of the lower Appellate court *viz-a-viz* declining injunction and allowing the appeal of the respondents-defendants was not on correct appreciation of law.

Before I could set aside the aforementioned judgment and decree, I have to deal with the rival contentions as noticed above *viz-a-viz* the condonation of delay in filing the appeal bearing No.3948 of 2016. I am in agreement with submission of Mr. Brar that it was sheer inadvertence in not filing two separate appeals as the appeal and cross appeal filed by the plaintiffs and defendants were disposed of by separate judgment and decree. It is in this backdrop of the matter, the delay of aforementioned days has occurred. This view of mine is fortified by judgment of Hon'ble Supreme Court in **Collector Land Acquisition, Anantnag and another Vs. Mst.**

Katiji and others 1987 AIR 1353 wherein it has been held that in case there is merit and force in the appeal, the delay could not come in the way of parties and should be condoned.

For the reasons aforementioned, the delay of 1836 days in filing the appeal is condoned owing to the fact that the connected appeal against the dismissal of the suit had been filed within limitation.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High

Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29] ”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As regards the prayer for declaration, I am of the view that there is force and merit in the submission of Mr. Jain, learned Senior

Counsel as on reading of the revenue records as noticed by both the Courts below, the appellants-plaintiffs have not been able to come within the ambit of the provisions of the Act aforementioned. There has to be a continuous possession of 30 years and without payment of rent. The ingredients of provisions of the aforementioned Act are conspicuously missing and therefore, there is no error or illegality, much less, perversity in the judgments and decrees of the Courts below declining the relief of declaration.

The judgments and decrees of the lower Appellate Court are set aside and consequently, the judgment and decree passed by the trial Court decreeing the suit partly viz-a-viz injunction is hereby restored meaning thereby the regular second appeal bearing No.3110 of 2011 is hereby partly allowed whereas the other appeal bearing No.3948 of 2016 in view of the observations made above is allowed. This will not preclude the respondents-defendants from taking the remedy/possession in accordance with law.

(AMIT RAWAL)
JUDGE

October 17, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No