

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
101/A**

Date of Decision: 22.04.2016

C.M. No. 4385-C & RSA No. 1619 of 2012

Nirmohan Kaur and others

.....APPELLANTS

VERSUS

Inder Kaur and another

.....RESPONDENTS

C.M. Nos. 4469-70-C of 2012 & RSA No. 1647 of 2012

Nirmohan Kaur and others

.....APPELLANTS

VERSUS

Inder Kaur and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

**PRESENT: Mr. Aman Kashyap, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASI, J (ORAL)

C.M. No. 4385-C of 2012 in RSA No. 1619 of 2012

Prayer in this application is for condonation of delay of 8 days
in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the counsel, the present application is allowed.
Delay of 8 days in filing the appeal stands condoned.

C.M. No. 4469-C of 2012 in RSA No. 1647 of 2012

Prayer in this application is for condonation of delay of 155
days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the counsel, the present application is allowed. Delay of 155 days in filing the appeal stands condoned.

C.M. No. 4470-C of 2012 in RSA No. 1647 of 2012

C.M. is allowed subject to just exceptions. Filing of certified copy of judgment and decree dated 19.10.2011 passed by the Additional District Judge, Patiala and judgment and decree dated 02.03.2010 passed by the Civil Judge, Junior Division, Patiala is dispensed with.

RSA Nos. 1619 & 1647 of 2012 (O&M)

By this order, I propose to decide two Regular Second Appeals i.e. RSA Nos. 1619 and 1647 of 2012, wherein challenge has been posed to the judgment and decree passed by the Civil Judge (Junior Division), Patiala dated 02.03.2010, whereby the suit for declaration and permanent injunction preferred by the appellants-plaintiffs has been dismissed while allowing the counter claim preferred by the respondents-defendant, two appeals against which preferred by the appellants-plaintiffs i.e. CA No. 95/22.4.2010 and CA No. 94/22.4.2010 have also been dismissed by the Additional District Judge, Patiala on 19.10.2011.

2. Learned counsel for the appellants restricts his arguments to make much of submission with regard to the claim of the respondents-defendants qua 425 sq. yards of land, qua which they have been able to establish their prior sale by the original land owner Parveen Kumar in their favour than that of the appellants-plaintiffs. He, however, states that for the remaining 75 sq. yards of land, the declaration, as prayed for, along with the injunction should have been granted by the Courts below. He contends that even if the counter-claim in toto is accepted, they would be the owners to

the extent of 425 sq. yards only, leaving the remaining 75 sq. yards to be the ownership of the appellants-plaintiffs and, therefore, the Courts below have wrongly proceeded to reject the claim of the appellants-plaintiffs qua the said 75 sq. yards merely on the ground that Parveen Kumar, the original owner, is not a party to the suit filed by the appellants-plaintiffs and in the counter-claim, which has been filed by the respondents-defendants, they have impleaded Parveen Kumar as well as the Power of Attorney holder Harvinder Singh as party respondents although they had given them up at a later stage. He, thus, contends that it cannot be said that Parveen Kumar, who was the original owner of the property and Harvinder Singh, who was the Power of Attorney holder, were not party to the case and, therefore, the stand of the Courts below cannot be accepted and deserves to be set aside with declaration to the extent that appellants-plaintiffs are the owners of 75 sq. yards of the remaining suit property.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments but do not find myself in agreement with his contentions.

4. The assertion of the appellants has to be restricted to the claim which they had made in the civil suit. It is proved that the appellants-plaintiffs have asserted their ownership over 500 sq. yards of land on the basis of the sale deed, which was executed by the Power of Attorney holder Harvinder Singh of the original owner Parveen Kumar. The respondents-defendants have been able to establish their ownership over 425 sq. yards of the suit property. The remaining 75 sq. yards of land has now been claimed by the appellants, qua which the declaration is being sought. The decree of declaration, as is being sought, cannot be passed against the respondents-

defendants because they are not the owners of the property and the original owner is Parveen Kumar, who is not a party to the suit preferred by the appellants-plaintiffs. No efforts have been made by the appellants to implead him even at a later stage in their suit. In the absence of Parveen Kumar being a party to the suit preferred by the appellants-plaintiffs, the declaration, as prayed for which would be qua the original owner i.e. Parveen Kumar, has rightly been declined by the Courts below. The plea of the counsel for the appellants that the counter-claim has only been granted to the extent of 425 sq. yards declaring the respondents-defendants to be the owners in possession of the said suit land on the basis of their prior sale deed and, therefore, qua the remaining 75 sq. yards, at least a declaration to that effect should be given against the respondents-defendants, cannot be accepted for the simple reason that the respondents-defendants are not the owners of the suit land as it is an admitted position that the owner, if any, would be Parveen Kumar, who is unfortunately not a party to the suit preferred by the appellants-plaintiffs. The impugned judgments being in accordance with the pleadings and the evidence brought on record and sound in law do not call for interference by this Court.

5. No other point has been raised or argued by the counsel for the appellants.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

7. There is no substantial question of law in these appeals, which requires consideration of this Court.

8. In view of the above, finding no merit in these appeals, the same stand dismissed.

April 22, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**