

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

I.

**RSA No.1838 of 2012
Date of decision: 2.9.2016**

Nafe Singh

... Appellant

Versus

Ranbir Singh and others

... Respondents

II.

I.

**RSA No.5136 of 2013
Date of decision: 2.9.2016**

Amit Kumar and others

... Appellants

Versus

Ranbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.D.S.Patwalia, Sr.Advocate, with
Mr.Kannan Malik, Advocate,
for the appellant.

Mr.Arun Jain, Sr. Advocate, with
Mr.Arjun Veer Singh, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two regular second appeals

who are aggrieved of the judgment and decree rendered by both the courts.

Mr.D.S.Patwalia learned senior counsel assisted by Mr.Kannan Malik submits, that Nafe Singh had sold the property vide three sale deeds dated 2.1.2003, 10.1.2003 and 10.11.2003. The aforementioned sale deeds had been challenged at the instance of son of the defendant No.1-Nafe Singh. The property at the hands of Nafe Singh was not ancestral but self-acquired property. Unfortunately, the defendants could not contest the case as they were proceeded against ex parte on 7.4.2009. He further submits that the respondent plaintiff has failed to produce direct and cogent evidence to prove that property alleged to have been fallen from Khyali Ram grandfather of defendant No.1 and, therefore, the suit was liable to be dismissed and urges this Court for grant an opportunity to lead evidence to rebut averments of the plaint much less documentary evidence.

Per contra, Mr.Arun Jain learned senior counsel assisted by Mr.Arjun Veer Singh submits that in Ex.P1 to P15 are sufficient piece of evidence discussed by the courts below to form an opinion that the property at the hands of Nafe Singh was ancestral. The defendants intentionally did not contest the suit. If at all, they have some interest, they could have moved an application for setting aside of the ex parte proceedings. Even the appeal was barred by law of limitation, no explanation has come forth in seeking condonation of delay muchless acquisition of knowledge of the ex parte judgment and decree and urges this Court to affirm the findings.

I have heard the learned counsel for the parties and perused the paper-book and of the view that it is a case where defendants should have been afforded an opportunity to contest the averments made in the plaint.

Lower appellate court ought to have been liberal in condoning the delay and sought the report from the trial court with regard to the evidence to be led by the defendants. In my view, there are certain documents which were required at the instance of the plaintiff to connect the property alleged to have been fallen from the succession of Khayali Ram and equally so the respondents would also be at liberty to rebut the same. Accordingly, the judgments and decree of both the courts below are set aside and the matter is remitted back to the trial court and start the case from the stage of evidence. The pleadings already brought on record shall be taken into consideration. In case, both the parties seek to additional pleadings, they are at liberty to do so. It is expected that the trial court shall provide 4-4 effective opportunity to both the parties and dispose of the same within a period of one year as the matter is lingering in the court since long.

Learned counsel for the parties as well as parties are directed to appear before the trial court on 3.10.2016.

Both the appeals stands disposed of in the abovesaid terms.

(AMIT RAWAL)
JUDGE

September 2, 2016
Paritosh Kumar

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No