

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. Nos. 8776-79-C of 2012 and
RSA No. 3292 of 2012 (O&M)

Date of Decision: 04.04.2016

Labh Singh Dadahuria and others

.....APPELLANTS

VERSUS

Dhian Singh and others

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. S.P.Garg, Advocate,
for the applicant/appellants.

AUGUSTINE GEORGE MASIH, J (ORAL)

C.M. No. 8776-C of 2012

Prayer in this application is for condonation of delay of 27 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of appellant No. 1, the present application is
allowed. Delay of 27 days in re-filing the appeal stands condoned.

C.M. No. 8777-C of 2012

C.M. is allowed subject to just exceptions. Filing of certified
copy of judgment dated 13.09.2011 is dispensed with.

C.M. No. 8778-C of 2012

Prayer in this application is for impleading the legal heirs of
deceased Ved Parkash, Patwari-respondent No. 3, who is stated to have died

on 15.02.2012 leaving behind his legal heirs, as detailed in para-2 of the application. The application is supported by the affidavit of appellant No. 1.

For the reasons mentioned in the application, the same is allowed. The legal heirs of the deceased Ved Parkash, Patwari, as detailed in para-2 of the application, are impleaded as respondents subject to just exceptions, for the purpose of the present appeal only. The amended Memo of Parties is already on record.

RSA No. 3292 of 2012

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division) Barnala dated 13.09.2011, whereby the suit for permanent injunction preferred by the respondents-plaintiffs for restraining the appellants-defendants No. 1, 3 and 4 along with respondents-defendants No. 2 and 5 from interfering in the peaceful possession of the respondents-plaintiffs, who had purchased the said suit land vide vasika Nos. 7825 and 7826 respectively dated 20.02.1990 from the father of respondent-defendant No. 1 Amar Singh, stands decreed, appeal against which preferred by all the defendants was dismissed by the Additional District Judge, Barnala on 17.02.2012.

2. It is the contention of the learned counsel for the appellants that as per the pleadings of the respondents-plaintiffs, they have purchased 1 Kanal and 2 Marlas of property vide two sale deeds i.e. 7825 and 7826 dated 20.02.1990 from Amar Singh, father of appellant No. 2 Hira Singh. He contends that as per the said sale deeds, the respondents cannot be the owners of the property in excess of 1 Kanal and 2 Marlas. It is admitted by the respondents-plaintiffs that on half of the portion, the house has been constructed and the remaining half is lying vacant. He, thus, contends that

as per the property detailed in the head note 'A' & 'B', the said area would exceed 1 Kanal and 2 Marlas and, therefore, they cannot be held to be owners-in-possession of the property in excess of what they have purchased. He, thus, contends that the findings, as recorded by the Courts below, cannot sustain and deserve to be set aside.

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

4. It is not in dispute that earlier Amar Singh, father of appellant No. 2-defendant No. 1 Hira Singh had preferred a suit i.e. Civil Suit No. 275 dated 12.04.1994 against the respondents-plaintiffs and similarly, Civil Suit No. 417 was filed by the respondents-plaintiffs against Amar Singh. These suits were consolidated and decided vide a common judgment dated 07.11.1998, wherein the suit preferred by Amar Singh was dismissed and the suit filed by the respondent-plaintiff No. 1 Dhian Singh decreed. Unfortunately, Amar Singh died and the appellant-defendant No. 1 Hira Singh being the legal heir preferred two appeals against the judgement passed by the Civil Court i.e. Civil Appeal Nos. 236 and 237 dated 03.12.1998. The said appeals were consolidated and decided vide judgment dated 29.01.2004. The decision of the said appeals was dismissal. In the said litigation, the question was with regard to the possession of the same property as in the present suit, where on the basis of the sale deed got executed in favour of the respondents-plaintiffs, they were proved to be in possession of the said property on the basis of the demarcation report which was submitted by the Local Commissioner. The said judgments have attained finality as no further appeal has been preferred by the appellant-

defendant No. 1 Hira Singh. That puts an end with regard to the dispute qua the possession of the respondents-plaintiffs relating to the property as in the present case as the details of the property, as mentioned in the present suit, are identical to the one, which were mentioned in the earlier suit.

5. Even in the present suit, at the time when evidence was being led by the defendants and Ved Parkash (defendant No. 3), who appeared as DW-3, had claimed ownership and possession on the portion, as detailed in the subhead 'B' of the plaint, in his cross-examination, he has stated that there is a sale deed in his favour. The cross-examination was deferred for production of the said sale deed on the next date of hearing but despite putting an appearance, he failed to produce the sale deed. That having been so, it cannot be asserted that Ved Parkash is the owner of the property, which he specifically pleaded and asserted to be, when he had failed to produce the sale deed. The dispute, therefore, having been fully appreciated and decided by the Courts below on the basis of the pleadings and the evidence led by the parties on proper appreciation thereof cannot be faulted with.

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

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 the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 8779-C of 2012

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

April 04, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**