

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

(1) RSA-3935 of 2012 (O&M)
Date of decision: 12.04.2016

Gurcharan Singh

...Appellant

Versus

Nazar Singh and others

...Respondents

(2) RSA-3989 of 2012 (O&M)
Date of decision: 12.04.2016

Gurcharan Singh

...Appellant

Versus

Nazar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Kashmir Singh, Advocate for the appellant.

Jitendra Chauhan, J. (Oral)

CM-10595-C-2012 in RSA-3935-2012 and

CM-10810-C-2012 in RSA-3989-2012

These are the applications for condonation of delay of
60 days in refiling both the appeals. It is averred that the appeals
were filed on 19.04.2012 within limitation but the same were

returned with objections on 10.05.2012. Then the appeals were again filed on 02.07.2012 and again the same were returned with certain objections on 07.07.2012 and due to the objections, the delay was caused.

Keeping in view the averments made in the applications and the accompanying affidavits, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 60 days in re-filing the present appeals is hereby condoned subject to all just exceptions.

Main Case

The above noted two appeals are being disposed of by this single judgment, having arisen out of common judgment. However, the facts are being derived from RSA No. 3935 of 2012.

2. The brief facts of the case are that the parties to the litigation are governed by Hindu Law. The father of the parties, Sunder Singh was karta of the joint Hindu Family. Sunder Singh purchased the suit land, measuring 1 kanal and 10 marlas, vide sale deed No. 1302 dated 24.07.1968 but the sale deed was executed in the names of defendants No.1, 2, 4 and 5 only. The plaintiff and defendant No.3, Fauja Singh were minors at the time of execution of sale deed. But the suit land remained joint amongst the members of joint Hindu family. In the month of December, 1984, defendant

No.4 Surjit Singh and defendant No.5 Dalip Singh separated from the joint family and they were given $\frac{1}{2}$ share out of the suit land. On 25.05.1998, the plaintiff as well as defendants No.1 to 3 entered into a family settlement and they partitioned the $\frac{1}{2}$ share of suit land in equal shares, vide separate writing qua the family settlement made in bahi and rough site plan was also prepared. At the time of settlement dated 25.05.1998, it was agreed upon between the plaintiff and defendants No.1 to 3 that defendants Nos.1 and 2 shall execute sale deed in favour of the plaintiff and defendant No.3. Defendant No.2, Nachhattar Singh executed sale deed No.1540 dated 28.06.2005 in respect of plot measuring $3\frac{3}{4}$ marlas in the name of Fauja Singh (defendant No.3) without consideration. A writing for the maintenance of Veer Kaur, mother of the parties, also took place on 05.07.1999, in which the above said family settlement was acknowledged by respondent/defendant No.1 and other interested parties. The plaintiff requested the defendant No.1 to execute the sale deed for transfer of his share but the defendant No.1 refused to do so. Hence, the plaintiff has filed the suit.

3. The defendants No.2 to 5 contested the suit by controverting the pleas taken in the plaint and thereafter, issues No.1 to 7 as depicted in the judgment of the trial Court were

framed.

4. The suit for declaration and permanent injunction filed by the plaintiff/appellant was dismissed by the trial Court, vide judgment and decree dated 07.11.2008.

5. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree dated 18.01.2012.

6. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal has been filed by the appellant.

7. Heard, the learned counsel for the appellant and perused the record carefully.

8. It is contended that the appellant is the owner of 3 ³/₄ marlas in the suit property as per family settlement dated 25.05.1998 arrived at between the parties. The learned counsel refers to the family settlement Ex.DX and agreement dated 05.07.1999, Ex.DY, and further refers to the testimony of DW 1 to DW3 whereby they have admitted in most unambiguous terms the ownership of the appellant over the suit property and his possession over the same. The parties to the litigation are governed by Hindu Law and the suit property was purchased through joint

funds of joint family. As the appellant was minor, therefore, the suit property was not purchased in his name. The learned counsel further submits that it has been duly proved on record that the parties to the litigation are governed by Hindu Law and the family in question is a joint Hindu Family and the appellant has equal share in the suit property being its co-sharer. However, both the Courts below have failed to consider the above assertions of the appellant.

9. The parties to the *lis* are brothers and they were governed by Hindu Law. Sunder Singh, the father of the parties was karta of the joint Hindu Family. He purchased the suit land measuring 1 kanal 10 marlas and got executed sale deed on 24.07.1968 in favour of defendants Nos.1, 2, 4 and 5 only. Sunder Singh died on 25.05.1998. The appellant has claimed his share in the suit property on the basis of family settlement dated 05.07.1999, vide which it was agreed that defendants No.1 shall execute a writing/sale deed for transfer of share of the appellant and defendant No.2 in favour of defendant No.3. It has been alleged that the suit property was purchased out of joint family funds, however, there is nothing on record to justify this fact that the suit property was purchased through joint funds. The sale deed Ex.D2 does not indicate that the property was purchased from joint

family funds. There is also no document on record to suggest that the appellant and defendant No.3 were not minors at the relevant time. The appellant himself admitted that he was minor at the time of execution of sale deed, therefore, it can be safely inferred that he had not contributed anything towards the purchase of suit property. The argument raised by learned counsel for the appellant that defendant No.2 executed a sale deed in favour of defendant No.3 without any consideration is also not tenable, in view of the document Mark P3, produced on record by the appellant himself as per which the defendant No.2 had executed the sale deed in favour of defendant No.3 for a consideration of Rs.15,000/-. Perusal of Ex.D2, copy of sale deed and Ex. D3, copy of mutation, reveals that the suit property was owned by defendants No.1,2, 4 & 5 only and the appellant has no concern with the said property. Further, the family settlement dated 25.05.1998, Ex.P1, does not show that the same pertained to the suit property. There is no mention of area or khasra number etc., in the said family settlement. Therefore, in the face of the documents available on record, the appellant is not entitled to any share in the said property.

10. On consideration of all the facts and material on record, this Court finds no scope to interfere with the well reasoned judgments of the Courts below. These are pure findings of fact. No

question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for. Accordingly, both the appeals are dismissed.

12.04.2016

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(JITENDRA CHAUHAN)
JUDGE