

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

**CM Nos. 12709-11-C of 2012 in
RSA No.4560 of 2012 (O&M)
Date of Decision : 07.04.2016**

KASHMIR KAUR AND ORS

.....APPELLANTS

VERSUS

DARSHAN SINGH AND ORS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. H.S. Sullar, Advocate,
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J (ORAL)

C.M. 12709-C of 2012

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

For the reasons mentioned in the application, duly supported by the affidavit of appellant No.1, Kashmir Kaur, the delay of 8 days in re-filing the appeal is condoned. The application stands allowed.

C.M. 12710-C of 2012

Prayer in this application is for placing on record the photocopy of the sale deed dated 13.11.1986 as additional evidence and for placing the same as Annexure A-1. In the application, it is asserted that the sale deed dated 13.11.1986 was not in possession of the appellants-defendants because of which they could not produce the same.

Counsel for the applicants-appellants submits that the said document goes to the root of the stand as taken by the appellants-defendants and, therefore, could have been accepted by the lower Appellate Court where an application for placing on record the said document by leading the additional evidence was rejected. He contends that the present application may be allowed for the just and fair decision of the lis in the present appeal.

I have considered the submissions made by the learned counsel for the applicants-appellants but do not find any reason to differ from the once which have been given by the learned lower Appellate Court for not permitting the leading of additional evidence.

It is apparent that ample opportunities were granted to the appellants-defendants for concluding their evidence by the trial Court i.e. nine opportunities, out of which five were effective opportunities. As a matter of fact, DW1 Kashmir Kaur appeared as witness and in her cross examination, she has admitted the case of the respondent-plaintiff. That apart the sale deed has never been pleaded to be a defence by the appellants-defendants and thus this evidence could not have been permitted.

The application, therefore, being devoid of merit stands dismissed.

C.M. No. 12711-C of 2012

C.M. is allowed subject to just exceptions. Filing of certified copy of judgment and decree dated 05.09.2011 is dispensed with.

RSA No.4560 of 2012

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division) Tarn Taran dated 05.09.2011, whereby the suit for declaration to the effect that plaintiffs No.1 and 2 are co-owners in joint Khata of 1/3rd share and plaintiffs No.3 and 4 are co-owners in joint possession of 1/3rd share of the property left by Bahadur Singh of his 1/4th share as detailed in the head note of the plaint stand decreed, appeal against which preferred by the appellants-defendants has been dismissed by the Additional District Judge, Tarn Taran on 04.05.2012.

2. It is the contention of the learned counsel for the appellants that Sunder Singh was the original owner of the property. He had four sons, namely, Isher Singh, Bahadur Singh, Kesar Singh and Arjan Singh. Bahadur Singh died issueless and unmarried and, therefore, 1/4th share of the total property is the disputed one as the respondents-plaintiffs are claiming their 1/3rd share in the property which was owned by Bahadur Singh to the extent of 1/4th share out of the total Khata. He further contends that the plea as has been taken by respondents-plaintiffs is not sustainable in the law rather, as a matter of fact that there was a sale deed dated 13.11.1986 in favour of Sarabjit Singh and Ranjit Kaur respondents-defendants No.6 and 7. The Court should have given due weightage to the plea with regard to the unregistered Will which was executed in favour of the appellants-defendants. In the light of the said Will, the appellants-defendants were the rightful owners of the property which was

executed by Bahadur Singh qua his 1/4th share out of the total land owned and possessed by Sunder Singh. He thus contends that the judgments and decree as passed by the Courts below cannot sustain and deserves 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. The defence as taken in the written statement was limited to the extent of an unregistered Will dated 02.04.1987 alleged to have been executed by Bahadur Singh in favour of the appellants-defendants. The original Will was never produced in Court, not even a certified copy was produced on the record what to say of proving the same. The plea thus with regard to the Will dated 02.04.1987 has rightly been discarded by the Courts below.

5. As regards the sale deed dated 13.11.1986 which was sought to be projected as a defence in favour of the appellants-defendants, suffice it to say that the same was not even pleaded in the written statement by the appellants-defendants nor has the said sale deed been produced on record or proved. Once there is no pleading to the effect as has been sought to be projected at the time of leading evidence, the same cannot be taken into consideration. The Courts below have therefore rightly held that the said plea not being taken in the written statement cannot be allowed to be proceeded with. Judgment and decree as passed by the Courts

below cannot thus, be faulted with.

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

7. 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.

8. There is no substantial question of law in the present appeal, which requires consideration of this Court.

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

April 07, 2016
Dinesh

(AUGUSTINE GEORGE MASIH)
JUDGE