

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

RSA-1521 of 2013 (O&M)

Date of decision: 22.01.2016

Satwant Kaur and others

...Appellants

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

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

Jitendra Chauhan, J. (Oral)

CM-4102-C-2013

Keeping in view the averments made in the application, the same is allowed. The delay of 13 days in re-filing the present appeal is hereby condoned.

RSA-1521-2013

By way of the present appeal, the plaintiffs/appellants have assailed the judgment dated 20.09.2012, passed by the District Judge, Sirsa, upholding the judgment dated 21.04.2005, passed by the Civil Judge (Sr. Divn.), Sirsa, whereby the suit for declaration filed by the plaintiffs/appellants was dismissed.

2. It is contended by learned counsel for the appellants that both the Courts below have gravely erred while holding that a suit for declaration was not maintainable as an equally efficacious remedy of recovery was available under the law. The plaintiffs/appellants had also prayed for the relief of mandatory injunction and had prayed for directing the respondents to pay compensation on account of loss of value and utility of the unacquired land of the appellants. But both the Courts have not considered the above aspect of the matter.

3. Heard.

4. The appellant filed the Civil Suit No.368-C of 1999, on 20.12.1999, which was dismissed on 20.04.2005 on merits by the Civil Judge (Sr. Divn.), Sirsa. In the meanwhile, Smt. Ram Kaur, one of the plaintiffs expired. Her legal representatives filed the Civil Appeal No.22 of 2012, on 10.02.2012, after a period of 06 years 08 months and 19 days. Along with the appeal, the appellants filed an application under Section 5 of the Limitation Act for condonation of delay. The learned 1st Appellate Court dismissed the application for condonation of delay holding that the delay in filing the appeal has not been explained satisfactorily and in the absence of any such explanation for condoning the delay, there was no sufficient cause to condone the delay. Since the application for

condonation of delay has been dismissed, therefore, the 1st appeal was also dismissed being barred by limitation.

5. In this case, there were four plaintiffs who filed the suit. Smt. Ram Kaur plaintiff No.1 expired after the dismissal of the suit in hand. Her three sons namely Joginder Singh 52 years, Bhupinder Singh, 45 years and Lakhwinder Singh 40 years, were the plaintiff with their mother since deceased Ram Kaur. The plaintiffs knew the consequences of the order passed, however, none of the plaintiffs opted to file appeal challenging the judgment and decree dated 21.04.2005, dismissing the suit of the plaintiff. In the suit for recovery of the damages filed by the appellants, the delay has not been explained.

6. The plaintiffs were negligent in pursuing the litigation at every stage. No doubt the plaintiffs filed civil writ petition No.13687 of 1996 in which this Court observed that the petitioner would be at liberty to approach the civil Court. They ought to have immediately file the suit for recovery instead of filing suit for declaration and mandatory injunction. After the dismissal of the present suit, the plaintiffs instead of filing appeal in this Court, opted to file Civil Suit No.236-C of 2005 for recovery of Rs.6,16,220/- which was decreed on 19.09.2009, for a sum of Rs.1 lakh per acre compensation by the Civil Judge (Sr. Divn.) Sirsa.

The State of Haryana filed an appeal which was accepted by the 1st Appellate Court on 18.01.2011 and suit of the plaintiffs was dismissed. The plaintiffs did not file any regular second appeal in this Court against the judgment and decree dated 18.01.2011. This judgment and decree has become final. Then, the plaintiffs have opened the old box and filed this Civil Appeal No.22 of 2012 in 10.02.2012, after lapse of 06 years 08 months and 19 days. The plaintiffs have not filed any application for amendment of pleadings before 1st Appellate Court to make this suit for recovery of amount of damages. The real remedy available to the plaintiffs was to claim compensation in proceedings under Section 18 of the Land Acquisition Act. The Court became helpless to grant relief in time barred cases. This Court has considered the contentions on merits also. There is no defect in the judgment and decree dated 21.04.2005 and the suit in the present form is not at all maintainable. Hence this appeal is dismissed being merit less.

22.01.2016

*sumit.k***(JITENDRA CHAUHAN)**
JUDGE