

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105

C.M. Nos. 4205-06-C of 2013 &
RSA No. 1582 of 2013

Date of decision: February 15, 2016

Deen Mohd.

...APPELLANT

Versus

Rijazuddin and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amit Kumar Jain, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 4205-C of 2013

Prayer in this application is for condonation of delay of 11 days
in filing the appeal.

The reason assigned for the delay is that the applicant/appellant was of the opinion that the limitation would commence from the date of receipt of certified copy of the order and under this bona-fide belief, he approached the counsel at a later stage, which has resulted in delay of 11 days in filing the appeal. The application is supported by the affidavit of the applicant/appellant. Although the plea, as taken in the application, may not be justified but keeping in view the fact that the delay is of 11 days only, the prayer made in the application is allowed. Delay of 11 days in filing the appeal stands condoned.

Application stands disposed of.

RSA No. 1582 of 2013

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Ferozepur Jhirka, Mobile Court at Punhana dated 10.03.2011, whereby the suit preferred by the appellant-plaintiff for declaration to the effect that the appellant-plaintiff and respondent-defendant No. 1 Kamruddin are owners in possession of the suit land, as detailed in para No. 1 of the plaint, in equal shares and the impugned partition order dated 24.05.2006 passed by the Assistant Collector, 1st Grade, Punhana is illegal, null, void and not binding on the rights of the plaintiff as the said order has been passed ex-parte as he was not impleaded as a party to the said suit, appeal against which preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Nuh, District Mewat on 30.11.2012.

2. It is the contention of the learned counsel for the appellant that the finding recorded by the Courts below that the Civil Court did not have the jurisdiction to entertain the suit, is not sustainable in the light of the fact that the proceedings for partition, which were initiated by the respondent-defendant No. 1 after the appellant-plaintiff having become owner of the property on the basis of the registered sale deed dated 19.05.2003, rendered him a co-sharer as respondents-defendants No. 2 to 4 had sold their share of the property. He, therefore, became half share holder of the suit property. Although while preparing the *Naksha*, his name has crept in but that was without notice to the appellant-plaintiff and, therefore, the Civil Court had the jurisdiction to entertain the suit. The finding, thus, returned by the Court, on this issue, cannot sustain and deserves to be set aside.

3. I have considered the submissions made by the learned counsel

for the appellant and have gone through the impugned judgments but do not find any merit in the contentions of the counsel.

4. The assertion of the counsel with regard to the initiation of the partition proceedings after the appellant-plaintiff having become the owner of the property without impleading him as a party could not have been accepted by the Civil Court provided it had the jurisdiction to do the same especially when the remedy is available under the Punjab Land Revenue Act, 1887 (hereinafter referred to as 1887 Act') to challenge the order of the Assistant Collector, 1st Grade. It is not the case of the appellant-plaintiff that he did not make any attempt to that effect rather he had filed an appeal but unfortunately, to the same authority which had passed the order dated 24.05.2006 and the said authority had dismissed the same as having no jurisdiction to decide the appeal. The remedy is available to the appellant-plaintiff under the provisions of the 1887 Act but the same has not been availed of. Further, as per Section 158 of the 1887 Act, the jurisdiction of the Civil Court has been barred to set aside the order passed under Section 158 (2) of the 1887 Act. The judgments relied upon by the Courts below could not be controverted by the counsel for the appellant.

5. 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. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

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

In the light 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.

February 15, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**