

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

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Regular Second Appeal No.2686 of 2013 (O&M)
Date of Decision: April 04, 2016

Des Raj

...Appellant

Versus

The Municipal Corporation, Jalandhar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amarjit Markan, Advocate
with Mr. Kanwal Goyal, Advocate
for the applicant-appellant.

Mr. Harsh Aggarwal, Advocate
for respondents No.1 and 2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.7117-C of 2013

Prayer in this application is for condonation of delay of 121 days in re-filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of the applicant-appellant, the same is allowed.

Delay of 121 days in re-filing the appeal stands condoned.

CM No.7118-C of 2013

Prayer in this application is for permission to place on record document Annexure A-1 and for dispensing with filing of its certified copy and fair typed copies of the impugned judgments and decree.

Application is allowed.

Document Annexure A-1 is taken on record subject to just exceptions.

Exemption from filing the certified copy of Annexure A-1 and

fair typed copies of the impugned judgments and decree is granted subject to just exceptions.

RSA No.2686 of 2013

One of the primary contentions, which have been raised by learned counsel for the appellant, is that the application under Order XLI Rule 27 CPC preferred by the appellant for leading additional evidence has not been decided prior to deciding the appeal.

Records of the Courts below were called and on perusal thereof, it has been found that the said application was dismissed by learned Additional District Judge, Jalandhar, on 23.08.2012, by a detailed order. Perusal of the impugned judgments would show that the same has been passed on due consideration of the evidence and the pleadings. The plaintiff sought a suit for declaration to the effect that there is a 15 feet wide public street which is in existence prior to the partition of the country as shown in the plan (Annexure 1) as detailed in the headnote which has been illegally encroached by the respondents which was dismissed by the Additional Civil Judge (Senior Division), Jalandhar, on 14.08.2007, appeal against which preferred by the appellant-plaintiff was dismissed by the Additional District Judge, Jalandhar, on 23.08.2012.

The findings as recorded by the Courts below show that there is no encroachment by the respondents and further no specific time and date has been mentioned as to when encroachment was carried out by the respondents.

There is mere guess work on the part of the appellant-plaintiff by asserting that in the year 1980, the encroachment was done. The

appellant-plaintiff has in his cross-examination admitted that his son had purchased the property in the year 1997 and thus, he was not the owner of the property in the year 1980. The Courts have, therefore, rightly concluded that as to how the appellant-plaintiff had come to know about the encroachment made 17 years prior to the purchase of property by his son. The judgments thus, cannot be faulted with.

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

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

April 04, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE